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IN THE

Supreme Court of the United States

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No. 119

October Term, [redacted] 1969

GEORGE LARIS, *Petitioner,*

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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IN THE

Supreme Court of the United States

No. .....

October Term, 1968

GEORGE LARIS, *Petitioner,*

v.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Justices of the Supreme Court of the United States:

This petition of George Laris is for the allowance of an appeal from the denial of a Petition of Allocatur to the Supreme Court of Pennsylvania. The denial of Allocatur (that is an allowance of an appeal) was rendered on February 12, 1969. This denial in effect was an affirmance by the highest Court of the Commonwealth of Pennsylvania of the order and sentence of April 3, 1968 of the Court of Quarter Sessions of Beaver County, Pennsylvania. This order and sentence had been affirmed in a *per curiam* order filed December 12, 1968 by the Superior Court of Pennsylvania to which a direct appeal had been taken from the order and sentence of the Court of Quarter Sessions of Beaver County. A copy of the *per curiam* order of the

Superior Court of Pennsylvania and the dissenting opinion of Judge Hoffman in which Judge Spaulding joined, is attached hereto and marked Exhibit "A".

History

(All record references are found in the pertinent record of this case which is attached hereto and made a part hereof and marked Exhibit "B".)

This is a criminal appeal from the conviction of the defendant, George Laris. The history of this case in its relevant parts is short. It is also for the defendant, George Laris, a traversity of constitutional infringements of his basic rights within the concept of ordered liberty.

On June 14, 1963, police officers, Trooper Joseph J. Valent and Lieutenant Roy Tittler without a search warrant and without an arrest warrant, went onto the property leased by the defendant, George Laris, and his wife from O. B. Weinman and Lucille S. Weinman, his wife (69a, 70a, 71a). (Laris had the premises subleased but he had reserved for business purposes the ground area as well as the area within the building at issue in this case.) This surveillance was undertaken because on a prior occasion, Officer Tittler had ". . . looked at the building with an informant who was pointing it out to me" (117a). While on Laris' property, the police officers, on June 14, 1963, surreptitiously looked into the building on the private property and saw no criminal activity of any kind going on in this building (76a, 77a, 117a, 118a, 119a). In fact, Lieutenant Tittler saw the defendant, George Laris, making sandwiches (118a). They did observe in this building, a dice table (77a, 118a, 119a) but there was no gambling going on (82a). Moreover, they obtained no information

that they could use to make arrests or file for arrest warrants (99a). This *whole* surreptitious surveillance, including the looking into the building, was on the private property of the petitioner and was *without* an arrest warrant and *without* a search warrant.

Again *without* the benefit of either a search warrant or an arrest warrant, on June 22, 1963 at about 9:30 P. M., Trooper Valent with Trooper McCloskey returned to the property of George Laris. Their return, Trooper Valent stated, was based on, "Later information came to the attention of these officers . . ." (82a). While within the private premises, they attempted to observe from a hundred feet away (82a, 83a), activity within the building. They could not observe any activity whatever in the building from that distance (83a), except several cars coming and the occupants going inside the building (83a, 84a). Therefore, the two troopers continued their trespass and unlawful entry on private property by going further onto the property. They went up to the building on petitioner's property and right up against the window of that building (146a). They also, at this time had neither a search warrant nor an arrest warrant. They heard cards being shuffled and could hear loose silver (85a, 146a). Within the hour, Troopers Valent and McCloskey informed Lieutenant Tittler of what they had seen and heard when they were up against the window of the building; with other officers they formulated plans for a raid (85a, 86a); went to a justice of the peace and;

(1) Filed a criminal information against Jack Mazza and George Laris; and,

(2) For the first time obtained a search warrant for the building (147a); and

(3) Also for the first time obtained body warrants for the arrest of Jack Mazza and George Laris.

The Commonwealth concedes (65a, 66a) and the Court below noted this concession (254a), that the search warrant obtained was invalid. Within several hours, the police officers, under the color of the authority of the invalid search warrant and with the arrest warrants, proceeded to the property of Mr. Laris, arrested him and seized the dice table (observed on the first of the previous surreptitious surveillances, *i. e.* the one of June 14, 1963), and other gambling accessories. These, with testimony based on these searches, were introduced at trial over petitioners' motion to suppress because the lower court ruled that:

(a) The building was not a constitutionally protected area but an open field; therefore, there was no constitutional need of a search warrant to conduct the surveillance of standing up against the windows to see and listen for gambling activities inside the building;

(b) The building was not a constitutionally protected area; therefore, a surreptitious surveillance could not produce "tainted fruit." Therefore, the fruit of the search and seizure (not being illegal) could not only be used as the basis of an arrest warrant, but also the gambling paraphernalia and the testimony based on such searches was admissible evidence as an incident of the arrest.

The lower Court previously denied defendant's petition to suppress the seized evidence, and the testimony based on these searches, as well as the observances on the previous surreptitious and warrantless occasions. The Petition to Suppress, by motion, was renewed at trial and it was

agreed that all testimony and evidence relating to these matters came in under objection (64a, 65a, 66a, 67a).

On the basis of the evidence and testimony contended to be improperly introduced as all being the fruit of illegal warrantless searches made on the two surreptitious surveillances of June 14, 1963 and June 22, 1963, the petitioner, George Laris, was convicted on a three-count indictment charging him with gambling. The Trial Judge, on April 3, 1968, entered an order sentencing the defendant to prison for a total term of not less than one year and not more than two years, as well as to pay a fine and costs.

Questions Presented

1. Do acts of police officers constitute an unreasonable search when, based on the vague information of unidentified informants and without a search warrant, they go on private property and observe several cars going up to a building a hundred feet away and the occupants of the cars going inside that building and then the officers surreptitiously stand right up against windows (covered with black paint to prohibit looking in) of that building surrounded by 30 acres of private ground for the purpose of eavesdropping and for the purpose of seeing gambling activities, if any, inside?

2. Can the tainted information (the fruit of the unreasonable searches) furnished by warrantless surreptitious surveillances (the last of which had taken place a few hours before) be used as the sole probable cause for the issuance of an arrest warrant?

3. Was the gambling paraphernalia seized as an incident of the arrest in this case (whether it was on view or with an arrest warrant) and the testimony based thereon,

purged from their primary taint which attached by reason of such evidence being the "fruit" of warrantless surreptitious surveillances, the last of which had taken place only a few hours before?

ARGUMENT

The refusal of the Pennsylvania Appellate Courts to reverse judgment of sentence or grant a new trial of necessity, rests on the following grounds:

(1) The lower court's holding that regardless of what petitioner did to insure privacy (*e. g.* painting the windows black (121a, 122a) and placing a watchman at the door entrance) the given enclosure, a permanent building with 30 acres of private ground surrounding it was an open field; therefore, the information the police officers gathered on their two surreptitious surveillances (which were 8 days apart) of the petitioner and the activity and contents within the said building although done without a search warrant was not violative of his Fourth Amendment rights.

(2) The dissenting opinion of Judge Hoffman in the Superior Court as concurred in by Judge Spaulding of that Court reveals that the Superior Court's affirmance was predicated on the fact that the majority of the Superior Court adopted the Commonwealth's theory that *Katz v. United States, supra,* ". . . is limited to cases involving surveillances conducted by means of electronic devices." See page 4 of the dissenting opinion in the Superior Court attached as Exhibit "A".

In promulgating such principles, in effect, the Pennsylvania Courts hold:

(a) It is of no constitutional significance that petitioner and his associates erected a "wall of privacy" to give them a reasonable expectation of privacy in their given enclosure, petitioner's permanent building.

(b) It is of no constitutional significance that there were two warrantless and unauthorized physical entries (right up against the windows, painted black) on petitioner's property and while he was in the building.

(c) It is of no constitutional significance that based upon the vague information of unidentified informants, the police officers deliberately and without search warrants surreptitiously made two surveillances of the petitioner and the activities and contents within the building; and that the information generated from these surreptitious surveillances was within several hours after the last such surveillance, used by them as the sole basis for the issuance of an arrest warrant for Petitioner's arrest and for seizure of the gambling paraphernalia as an incident to that arrest.

(d) It is of no constitutional significance that petitioner was convicted solely on the fruit and products of these surreptitious surveillances and the two unauthorized physical entries and warrantless "searches and seizures."

Katz v. United States, 389 U. S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), reversed judgment, where a conviction resulted from tape recordings only of petitioner's end of telephone conversations made in a public telephone booth. These recordings were made by an electronic device that did not penetrate the booth. The FBI, although making no effort to obtain judicial authorization, used

restraints similar in nature to safeguards that a judicial officer would impose. Nevertheless, this Court held:

> "Indeed, we have expressly held that the Fourth Amendment governs not only the seizure of tangible items, but extends as well to recording of oral statements overheard without any 'technical trespass under * * * local property law.' *Silverman v. United States,* 365 U. S. 505, 511, 81 S. Ct. 679, 682, 5 L. Ed. 2d 734. Once this much is acknowledged, and once it is recognized, that the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures . . . The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment.
>
> "It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific court order. Nor were they directed, after the search had been completed to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause.' *Agnello v. United States,* 269 U. S. 20, 33, 46 S. Ct. 4, 6, 70 L. Ed. 145, for the Constitution requires 'that the deliberate impartial judgment of a judicial officer * * * be interposed between the citizen and the police * * *' *Wong Sun v. United States,* 371 U. S. 471, 281-482,

> 83 S. Ct. 407, 414, 9 L. Ed. 2d 441. 'Over and again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes.' *United States v. Jeffers*, 342 U. S. 48, 51, 72 S. Ct. 93, 95, 96 L. Ed. 59, and that searches conducted outside the judicial process, without prior approval by judge or magistrate, as *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.''
>
> ''These considerations do not vanish when the search in question is transferred from the setting of a home, an office or a hotel room, to that of a telephone booth. Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures.''

In the instant case, the eavesdropping occurred right up against the windows in the two surreptitious surveillances, eight days apart. Although there was no entry into the buildiing and electronic devices were not used, we see no distinction from *Katz v. United States, supra.* What is prohibited to electronic eavesdropping should also be prohibited to naked ear eavesdropping. The procedural aspects of the officers' actions must conform with constitutional safeguards—not the devices used—whether they be artificial or natural.

This Court has held that the Fourth Amendment protects people and not simply areas from unreasonable search and seizure. Therefore, the material structure of a given enclosure is of no significance. The focus is on the matter searched and seized—whether it was knowingly exposed to the public or safeguards were used to retain its privacy. The windows painted black, the complex door knob system used to gain entrance to the building in issue and the guard all manifest the intent that the petitioner wanted to assure

his privacy and to insulate himself from a warrantless search and seizure.

The fact that the petitioner subleased the premises and reserved for business purposes, use of the land and the building, does not strip him of his Fourth Amendment rights as long as he is lawfully on the premises. See *Jones v. United States,* 362 U. S. 257, 4 L. Ed. 2d 697 (1960), where the person challenging the seizure of evidence had no proprietory interest in the property in issue in that case, but was lawfully on the premises at the time of the search. Here, the facts are not disputed that the petitioner, George Laris, was lawfully on the premises on both occurrences of the surreptitious surveillances.

There was no probable cause for the officers to conduct their two surreptitious surveillances without a search warrant, because:

(1) The information as to gambling activities within the building was given to the officers by an unidentified informer sometime prior to their first surreptitious surveillance of June 14, 1963. (It was then that they saw a dice table in the building.) The reference to the unidentified informant does not disclose his reliability, etc. other than what Trooper Tittler stated, that he, ". . . looked at the building with an informant who was pointing it out to me" (117a) and also, by what may be interpreted as a subsequent unidentified informant's vague information. "Later information came to the attention of these officers . . " (82a).

(2) Before going up right against the windows of the building that were painted black, from a distance of 100 feet away or more, the police officers, while on

petitioner's private property, without any warrant, saw on the second of the two surreptitious surveillances, only several cars coming and the occupants going inside the building (83a, 84a). It is obvious that the reason they proceeded to the building for the second surveillance was because at least partly of what they had seen on the first surveillance of June 14, 1963, *i.e.* the dice table.

In that case of *Recznik v. City of Lorain,* 21 L. Ed. 2d 317 (1968), at p. 321, certiorari was granted and conviction reversed without having the case argued. In that case, police officers received tips from persons who had stopped the officers on the street and informed them that gambling was going on at an apartment. At the time of their arrival, at the aforesaid apartment, the officers noted an unusual large number of cars parked in the apartment vicinity, and warned the proprietor that there should be no illegal activity going on and that they would return in a half an hour. When they did return, the officers again noted the large number of cars parked near the building and also observed several men entering the apartment. The officers went to one of the entrances of the apartment and tried to look through the window and door. They heard the sound of voices inside but were unable to see inside. Consequently, while on their way to use the back door approach, the petitioner opened the door to converse with them. While the door was open, one of the officers saw a dice game in progress. This lead the officers to enter the room, place everyone under arrest and seize the gambling paraphernalia. This Court held:

> "The respondent's suggestion that the officers were privileged to enter because the apartment 'at that point had taken on, from the amount of people, a public appearance,' is untenable. The congregation of a

large number of persons in a private home does not transform it into a public place open to the police.

Respondent argues that the entry into the apartment was justified as incidental to the arrest of the petitioner, who the officers had probable cause to believe was conducting an illegal game. The senior arresting officer, however, did not so view the matter, for he conceded that when he entered the apartment, he 'had no evidence to make an arrest.'

Nevertheless, it is argued, the officers could have entered to arrest the petitioner in view of the tips received from informers that evening and their own corroborating observations of the activities at the apartment. We cannot agree that the knowledge of the officers revealed by this record amounted to probable cause to believe that a crime was being committed. The testimony of one officer that the building was a 'noted gambling joint' was stricken by the trial judge, and no further effort was made to show that either the petitioner or the apartment was at that time connected with illicit gambling operations. Nor did the respondent even attempt to establish that the informers were reliable. The officers identified these informers only as 'people on the street' who were previously unknown to the officers and whose names they did not bother to ask because 'there was no reason for it.' They did not relate what information they received from these nameless individuals other than that there were 'all sorts of gaming devices downstairs.' "

In the first surreptitious surveillance without a warrant, the officers obtained no information from which they could make arrests and file for arrest warrants (99a). Although seeing a dice table in the building (77a) there was no gambling going on (82a).

Their second surreptitious surveillance coupled with the first surveillance, gave them the necessary information for the purpose of procuring arrest warrants and a search warrant (the search warrant ultimately was conceded to

be invalid). The procurement of these warrants not only was:

(1) Based upon the "fruits" of the officers' unlawful action on these two warrantless surreptitious surveillances; but,

(2) The procurement of the warrants as well as the raid was all done within several hours after their last warrantless surreptitious surveillance.

We respectfully submit that:

(a) The "fruits" of the illegal searches of the first and second surveillances cannot be used as a probable cause for the arrest warrant or for authorizing an arrest on view at the time of the raid because such tainted information vitiated the officers' authority. See *Alderman v. United States,* 22 L. Ed. 2d 176, at 189 (1969).

(b) As the record does not disclose information from an independent source used for the procurement of the arrest warrant and for the conducting of the raid; and as these events occurred within several hours after they obtained such tainted information from their last surreptitious surveillance, there was no attenuation as to dissipate the aforesaid taint.

(c) The evidence seized at the time of the raid as part of the incident of the arrest, whether the arrest was with a warrant or as an arrest on view, and the testimony based thereon were the "fruits" of the prior unlawful first and second surveillances and could not be admitted into evidence at trial and form the basis of a conviction.

These principles are well set forth in the case of *Wong Sun v. United States*, 371 U. S. 471 (1964) at 484:

> "In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, *Boyd v. United States*, 116 U. S. 616, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. *Weeks v. United States*, 232 U. S. 383. The exclusionary prohibition extends as well to the indirect as the direct products of such invasions. *Silverthorne Lumber Co. v. United States*, 251 U. S. 385.
>
> "The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion. It follows from our holding in *Silverman v. United States*, 365 U. S. 505, that the Fourth Amendment may protect against the overhearing of verbal statements as well as against the more traditional seizure of 'papers and effects.' Similarly, testimony as to matters observed during an unlawful invasion has been excluded in order to enforce the basic constitutional policies. *McGinnis v. United States*, 227 F. 2d 598. Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion."
>
> "We now consider whether the exclusion of Toy's declarations requires also the exclusion of the narcotics taken from Yee, to which those declarations led the police. The prosecutor candidly told the trial court that 'we wouldn't have found those drugs except that Mr. Toy helped us to.' Hence this is not the case envisioned by this Court where the exclusionary rule has no application because the Government learned of the evidence 'from an independent source.' *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 392; nor is this case in which the connection between the lawless conduct of the police and the discovery of the challenged evidence has 'become so

attenuated as to dissipate the taint.' *Nardone v. United States,* 208 U. S. 338, 341. We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' *Maguire, Evidence of Guilt,* 221 (1959). We think it clear that the narcotics were 'come at by the exploitation of that illegality' and hence that they may not be used against Toy.''

For similar principles, see also, *Alderman v. United States, supra.*

Conclusion

Petitioner states in conclusion that he believes that if this Honorable Court does not grant his petition for Writ of Certiorari that his constitutional privileges and immunities under the Fourth Amendment will have been denied without further redress for him and he will be unjustly and unlawfully placed in prison. Furthermore, petitioner believes the denial of his petition for Writ of Certiorari by this Honorable Court will perpetuate as to all other defendants in the Commonwealth of Pennsylvania, the same type of deprivation of the rights, privilege and immunities of the Fourth Amendment against unreasonable searches and seizures, as set forth in this Court's decisions in the case of *Katz v: United States, supra, Recznik v. City of Lorain, supra* and *Alderman v. U. S., supra.*

It is petitioner's further contention that the decision of the Court of Quarter Sessions of Beaver County, Pennsylvania, and the affirmance of the same by the Superior

Court of the Commonwealth of Pennsylvania by order, dated December 12, 1968 (Attached hereto and marked Exhibit "A"), and the denial dated February 12, 1969 of Petitioner's Petition of Allocatur to the Pennsylvania Supreme Court are in direct conflict with this Court's decisions in the cases of *Katz v. United States, supra, Recznik vs. City of Lorain, supra* and *Alderman v. U. S., supra.*

WHEREFORE, we respectfully request that judgment of sentence be reversed.

Respectfully submitted,

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Exhibit "A"

PER CURIAM ORDER OF SUPERIOR COURT OF PENNSYLVANIA

No. 613

IN THE

SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

vs.

GEORGE LARIS,

Appellant.

No. 176, April Term, 1968.

APPEAL FROM THE JUDGMENT OF SENTENCE OF THE COURT OF QUARTER SESSIONS OF BEAVER COUNTY AT No. 32, AUGUST TERM, 1963.

PER CURIAM. Filed: December 12, 1968.

Judgment of sentence affirmed.

Hoffman, J. files a dissenting opinion in which Spaulding, J. joins.

DISSENTING OPINION BY HOFFMAN, J.

J. 613

IN THE
SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

GEORGE LARIS,

Appellant.

No. 176 April Term, 1968.

APPEAL FROM THE JUDGMENT OF SENTENCE OF THE COURT OF QUARTER SESSIONS FOR THE COUNTY OF BEAVER, PENNSYLVANIA AT No. 32 AUGUST TERM, 1963.

(Filed: December 12, 1968.)

Appellant was found guilty of gambling and conspiracy. This appeal challenges the propriety of the lower court's refusal to suppress evidence.

The record discloses that appellant leased a cement block garage situated on thirty acres of land in Beaver County for the purposes of storing saddles, feed and other matters related to the business of raising and breeding horses.

An informant advised the police that gambling activities were being conducted in the garage. As a result, the Penn-

sylvania State Police on June 14, 1963, at 9:30 p. m., placed the premises under surveillance. They did not, however, obtain a search or arrest warrant. The surveillance was conducted from a hillside overlooking the garage and an adjacent parking area. After noticing cars entering the parking area, the police proceeded to the rear of the garage, where they peered inside the building by looking through cracks in black paint which covered a window. They observed a dice table.

At midnight, on June 22, 1963, again without the benefit of an arrest or search warrant, the officers returned to the garage. They went to "a point in the back of the garage from which we could overhear what was going on inside." Apparently, the officers pressed their ears next to the garage windows because one stated "We heard cards being shuffled and we could hear loose silver change being thrown on a table or thrown in some location, but we heard the silver and cards."

The police then returned to police headquarters where plans for a raid were formulated. On the morning of June 23, 1963, body warrants for the arrest of appellant and others were obtained.

Upon raiding the premises, the police seized coin and currency, playing cards, dice, a dice table and other gambling accessories, all of which were later introduced at trial over appellant's timely motion to suppress.

Appellant contends that the evidence was improperly introduced because it was the fruit of illegal searches made on June 14 and June 22.

It is apparent that the surveillances of June 14 and 22 furnished information which later served as the basis for the issuance of the arrest warrant on June 23, as well as

the source of incriminating testimony and evidence introduced at trial. If the surveillances were conducted in violation of appellant's constitutional rights, his arrest must be invalidated. As a result, the evidence seized at the time of the arrest and the testimony of the police officers at trial relating to the noises and voices they heard on the evenings of June 14 and June 22, having emanated from an unlawful search, must be suppressed. *Wong Sun v. United States,* 371 U. S. 471 (1963).

This case, in my view, is governed by *Katz v. United States,* 389 U. S. 347 (1967). In *Katz,* the Supreme Court overturned a conviction based on tape recordings of the defendant's end of telephone conversations placed from public telephone booths. The FBI obtained the recordings by using an electronic listening device attached to the outside of the telephone booths. The enclosed booths were not penetrated physically. The listening device was activated only while Katz was using the phone and was deactivated after he left the booth. The eavesdropping commenced after an investigation established that Katz used these phones to call a known gambler. No effort was made to obtain judicial authorization for the eavesdropping.

The Supreme Court held that, although there was no physical trespass, the eavesdropping constituted an illegal search. The "Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which (defendant) justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance . . . . One who occupies (a telephone booth), shuts the door be-

hind him, and pays the toll . . . is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. . . . These considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room, to that of a telephone booth. Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures . . . . The Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements, overheard without any technical trespass under local property law." Likewise, it "cannot turn upon the presence or absence of a physical intrusion into any given enclosure."

Therefore, although the FBI exercised self-restraint by limiting their eavesdropping, the court held that a judicial order permitting any eavesdropping was a prerequisite to admitting the evidence obtained. "Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionabley showing probable cause.'"

The lesson to be drawn from *Katz* is that police may not deliberately intrude on the privacy of citizens who reasonably expect to insulate themselves from surveillance unless a search warrant is first obtained.

In light of this broad concern expressed in the language of the opinion, I would reject the Commonwealth's contention that *Katz* on its face is limited to cases involving surveillances conducted by means of electronic devices. This reading overlooks the primary thrust of Katz: a person has a right to be secure against invasions of his privacy "upon which he justifiably relied" by police, except in those instances when the police have received proper judicial authorization. This has been described as a

"privacy-oriented, functional approach". The Supreme Court, 1967 Term, 82 Harv. L. Rev. 63, at 190 (1968).

Weighed against this standard, the conduct of the police in the instant case must be proscribed. On both June 14 and June 22, they conducted well planned surveillances which were calculated to break through the wall of privacy that defendant and his associates had so elaborately constructed. The police presence at the garage on both occasions was attributable solely to their desire to obtain information concerning defendant. Thus, this case does not present a situation where the police, in conducting official business, have stumbled across illegal activity. Rather, the police drove several miles out of their way to reach the garage and crossed several hundred feet of private property on foot in order to approach the rear of the building. They then, with ear pressed against garage window, and eye peering through a small crack in a window covered by black paint, collected information which led to this prosecution. In my opinion, these facts fall clearly within the forbidden ambit proscribed by *Katz*.

For these reasons, I would vacate the entry of judgment below and order a new trial to be held in accordance with this opinion.

SPAULDING, J., joins in this dissenting opinion.

Exhibit "B".

TRANSCRIPT OF TESTIMONY OF JUNE 14, 1967.

IN THE COURT OF QUARTER SESSIONS
OF BEAVER COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

VS.

GEORGE LARIS,

Defendant.

No. 32 August Session 1963.

Transcript of stenographic notes of testimony taken and proceedings had in the trial of the above cause before Honorable James E. Rowley, J., and a Jury, at the Court House, Beaver, Pennsylvania, beginning Wednesday, June 14, A. D. 1967, at 11:06 o'clock a. m., E. D. S. T.

Appearances:

Edward J. Tocci, Esq., Asst. Dist. Atty., appearing on behalf of Commonwealth.

[63a] Messrs. Conte & Courtney, By John Alan Conte, Esq., appearing on behalf of Defendant.

(Whereupon, the following transpired in chambers:)

Mr. Conte: May it please the Court.

The Court: Mr. Conte

Mr. Conte: At this time, before the Jury is sworn, I would like to make a motion to quash the indictment for the fact that on its face, the instrument shows it was executed June 23, 1963, that being a Sunday, and it is our

contention that that violated the act of 1705 which is 44 P. S., Section 1. I'm not going to argue my motion, because the law that I've researched states that a warrant can be issued on Sunday for an offense which would amount to a breach of the peace, but the closest case that comes to it, allowing the issuing of the warrant on Sunday, the information was not filed until Monday. The search warrant was approved on Sunday, but the information was not filed until Monday, so consequently, it was never decided. I'm just raising that point.

Mr. Tocci: First, I would like to say that his motion is not timely, because I'm totally unprepared to argue it. A new motion must be raised ten days prior to trial. [64a] It hasn't been done, and I'm in no position to argue it.

The Court: The Jury has been selected?

Mr. Tocci: Selected, your Honor, but not sworn.

The Court: I understand that they are in the Court Room and not sworn.

Mr. Tocci: That is right.

The Court: The motion is denied.

Mr. Conte: At this time, I would like to renew my motion for suppression of evidence of the gambling paraphernalia proposed to be introduced into the case and also suppressing the testimony of the officers in connection with gambling paraphernalia and what they saw for two reasons. First, depositions taken show that of officers acted under the color of a warrant issued June 23, 1963, and that this warrant is defective because it just described a home or building in Economy Borough and there's no further particularity on it.

Second, that this is not an arrest on view, because upon receiving the warrant, they proceeded to break the door down and make the raid. It is true, there was a previous surveillance that evening before they got [65a] the war-

rant, but they were standing right against the windows of the building and we feel it is an invasion of the rights, and invasion of the right of privacy, an invasion of the Fourth Amendment and on that basis, an arrest on view cannot stand up and furthermore, it cannot stand up because after they saw the gambling going on, they abandoned their posts and went to get the warrant.

Mr. Tocci: These issues have already been raised and disposed of by the Court and there is no further need for argument on it.

The Court: The motion is denied.

Mr. Conte: At the time, your Honor, to accommodate the procedure to the trial prior to our conference of record, I will agree to stipulate that I will raise no further objections to the arrest on view, the warrant and so forth, providing that we all agree that what I have raised now is sufficient to pass upon the legality or illegality of the warrant and the legality or illegality of the contention of the Commonwealth that this was an arrest on view and that the evidence is allowed to come in on that.

Mr. Tocci: To make it clear for the record, we will concede that the warrant is defective and that we are relying on the fact that this was an arrest on view and con-[66a] sequently, the evidence we produce on the warrant will be only for the general information of the Jury and not with the contention that the warrant was invalid in any way.

Mr. Conte: Of course, I'm entitled to object, but I will refrain from objecting if you will stipulate and agree that the issues are presently preserved for the record.

Mr. Tocci: I will agree to that and the only thing I want clear here is the fact that I refer to the obtaining of the warrant and that does not in any way contest its validity. The evidence submitted is done so on the basis of a valid warrant.

The Court: As I understand of what Mr. Conte wants and what I undersfand you are willing to agree to, Mr. Tocci, is that the evidence, that is, the various items of evidence seized in this raid which you intended to offer into evidence, will be received just as though he objected at that time without the necessity of him making an oral objection at the time it is received.

Is that right?

Mr. Conte: That's right, your Honor, and also, the testimony of the officers as to what they saw in addition to what they seized.

The Court: Is that all right, Mr. Tocci?

[67a] Mr. Tocci: That's correct, your Honor.

The Court: Very well. The various items of gambling paraphernalia received in evidence, will be used as though received over your objection, Mr. Conte, as well as the testimony of the police officers in the raid as to what they saw when they broke into the building.

Mr. Conte: What they saw which led to get the warrant because they broke into the building after they got the warrants.

Mr. Tocci: That's a factual issue now. Let's find out what the truth is at the trial.

Mr. Conte: Yes. The only thing I contest is the illegality and the violating of the Fourth Amendment.

The Court: Very well.

(Whereupon, the following transpired in open Court before Judge and Jury.)

Mr. Tocci: Your Honor, the issue has been joined and the Jury has not yet been sworn.

The Court: Very well, the Jury may be sworn.

[68a] (Whereupon, the Jury is sworn.)

(Whereupon, at this time, Mr. Tocci makes his opening statement to the Jury.)

Mr. Tocci: Your Honor, Trooper Valent advises me that the gambling table will be here shortly and I ask that the Court continue the matter until such time.

The Court: We will recess now until 1:15 p. m., members of the Jury.

(Whereupon, a recess was taken.)

Mr. Tocci: Is the Court ready to proceed?

The Court: Mr. Tocci, you may proceed.

Mr. Tocci: Mr. Weinman please.

O. B. WEINMAN, called as a witness on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Tocci:

Q. Would you state your name and address, please?

A. My name is O. B. Weinman and we live at R. D. #2, Wexford, Pennsylvania.

[69a] Q. Are you married?

A. Yes, sir.

Q. Your wife's name?

A. Lucille S.

Q. Do you own property that covers two counties including part of it in the Borough of Economy and Bell Acres?

A. I do.

Q. When was it you acquired that property?

A. I acquired it, I believe about '59 or '60. I'm not sure as to the exact date.

Q. And did you own that property on June 23, 1963?

A. I had leased it with an option to buy with Mr. Laris at that time.

Q. Who owned the property, you and your wife together?

A. Yes, joint.

Q. And you entered into a lease with Mr. Laris?

A. Yes, sir.

Q. And his wife?

A. Yes, sir.

Mr. Tocci: Would you mark this please.

(Commonwealth's Exhibit No. 1, being copy of lease, undated, containing three riders, was produced and marked for identification.)

By Mr. Tocci:

Q. I show you Commonwealth's Exhibit No. 1 for identification. Will you describe what that is?

[70a] A. That was a lease—this is a lease between George P. Laris and Josephine Irene Laris and O. B. Weinman and Lucille S. Weinman with a rental agreement with option to buy, in which he was to pay $250 a month for a period of two years and at the end of the two year period was to pick up the option, the rent money to be applied to the purchase price.

Q. Now, on the face of this, there is an indication that the first payment was due on the first day of October, 1961. Is that correct?

A. That's correct.

Q. Now, what buildings were on those premises?

A. There's a cement block building, I think its dimensions are 40 by 100 or 60 by 100 and a residence.

Q. What county was the residence in?

A. The residence is in Allegheny County.

Q. Would that be in Bell Acres?

A. Bell Acres Borough, yes.

Q. And what county was the cement block building?

A. Beaver County.

Mr. Tocci: I move Commonwealth's Exhibit No. 1 be admitted into evidence, your Honor, being a

lease agreement between Mr. Laris and Mr. Weinman.

Mr. Conte: We have no objection.

The Court: It will be received in evidence.

(Discussion off the record.)

[71a] The Court: Commonwealth's Exhibit No. 1 will be admitted into evidence.

Mr. Tocci: I also ask, your Honor, that since this is the original, that we be permitted to copy it and return the original to Mr. Weinman.

The Court: Permission is granted.

By Mr. Tocci:

Q. What purpose was the building to be used for?

A. As stated on the lease, a residence and a business.

Q. Did Mr. Laris take over possession of the two buildings and the property?

A. That's correct.

Q. Did you have an opportunity to go down to the property after you entered into the lease with him?

A. Yes, I did.

Q. Where did you go to?

A. I went to the house to collect some rent and I found that the house was being improved. In Mr. Laris' own statement at the time of the lease agreement, he informed all of us present, as well as my attorney, that he was going to move his daughter out there and have horses for her and I thought that was a pretty nice gesture remodeling that.

Q. That home was in Allegheny County?

A. Yes, sir.

Q. What about the building in Beaver County? Did you have an opportunity to see it?

[72a] A. No, sir.

Q. Did you have a chance to see what it was being used for at all?

A. No, I did not.

Q. Now, this exhibit of the Commonwealth is witnessed by Mary A. McDonnell. Who is she?

A. That's my attorney's secretary.

Mr. Conte: Excuse me that's Mr. Laris's daughter.

Mr. Tocci: I beg your pardon.

By Mr. Tocci

Q. Mr. Weinman, did you have any discussion with Mr. Laris about this property after you leased it to him?

A. Many discussions, yes.

Q. Did you have any discussions with reference to subletting or matters of that sort?

A. For a matter of Court record, Mr. Laris paid his rent exactly as it was due for three months and at the end of the three month period I had had everything up to that time, but I turned over to my attorney this lease because it was impossible for me to collect the rent.

Q. Did he talk to you about subletting the property?

A. In what phase?

Q. About whether he could sublet it?

A. No, sir.

Q. You had no discussions?

[73a] A. We did on one occasion after the raid on the gambling, he informed me he wanted to turn the property over to a Mr. Mouradain, and I told him that the lease we had was between Laris and his wife and myself and nobody else.

Q. And you would not concede to any subletting of the property?

A. No, sir.

Q. On or about the 23rd of June, 1963, did you have any idea what the cement block building was to be used for?

A. I had no idea.

Q. No idea?

A. No, sir. I thought it was to be used for a terminal for where he was bringing his trucks in and servicing them and using them like that. I think he had a vending machine operation.

Q. Is that what you thought it was being used for or is that what you knew it was being used for?

A. I knew that was what it was being used for.

Q. Did you go down to see that operation?

A. No, sir.

Q. Then you really didn't know?

A. That's what he told me it was being used for.

Q. Then, that's what you thought it was being used for?

A. That's right.

Mr. Tocci: Cross examine.

[74a] CROSS EXAMINATION by Mr. Conte:

Q. Mr. Weinman, did you see the horses on the property?

A. I sure did.

Q. They were a special breed of horses known as quarter horses, were they not?

A. I don't think so, because we own horses. He had a Palomino there and he had two bays that I remember. I think he had three horses in the field that I saw. They were not quarter horses.

Q. Was the property readily available for horses' maintenance or did he have to make some improvements?

A. He had to put in some fences, because his horses would get out and he would have to round them up. He put up some barbed wire, but it wasn't sufficient to keep them in.

Q. Did you see people coming to the premises for the purpose of seeing the horses and riding the horses?

A. No, sir.—

Mr. Tocci: We'll object—never mind. I'm sorry.

By Mr. Conte:

Q. When you turned this matter over to your attorney between you and Mr. Mouradian, you used the word subletting. I know you are not familiar with all the legal terminology, but I was there with Mr. Mouradian. Mr. Laris wanted to assign his rights to Mr. Mouradian.

[75a] A. As I understood it from a layman's point of view, and I think Mr. Laris will verify it, he said, "I'm unable to pay you and Mr. Mouradian will pay you from now on."

Q. And Mr. Mouradian would pay the rent for you?

A. No, sir.

Q. We went up to your attorney's office in Pittsburgh and—

A. But we never came up with anything on it.

Q. It never went that far.

A. That's right.

Mr. Conte: That's all, sir.

Mr. Tocci: That's all.

(Witness excused.)

Mr. Tocci: Trooper Valent, please.

TROOPER JOSEPH J. VALENT, called as a witness on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Tocci:

Q. Would you state your name, please?

A. Trooper Joseph J. Valent.

[76a] Q. Where are you stationed?

A. Chippewa Township, Beaver Falls.

Q. On June 23, 1963, you filed this charge we are here for today against Mr. Laris?

A. Yes, I did.

Q. When was it that you first had contact with Mr. Laris on these premises that eventually brought about this charge?

A. Do you mean the first surveillance?

Q. Yes.

A. That was conducted on June 14, 1963.

Q. Who was present at that time?

A. Lieutenant Roy Titler and myself.

Q. Who was in charge of this detail on this operation?

A. Lieutenant Titler was in charge.

Q. What did you and he do that particular night, June 14, 1963?

A. From a point on the hillside overlooking the garage and parking area, the front of the garage and parking area, we observed the defendant, Mr. George Laris and also another man, Jack Mazza, and they were proceeding in and out of the garage. They had a few vehicles coming in. We also proceeded around to the rear of this building, this concrete block building, from which point we could observe, by looking through the window, that there was no activity going on inside at that time.

Q. You speak of this concrete block building. Is that the one Mr. Weinman referred to as being in Economy Borough?

[77a] A. Yes, that's right.

Q. Did you actually look inside the premises on June 14, 1963?

A. Yes, we did.

Q. What did you observe inside?

A. The inside was partially lighted and we observed the dice table which is present here in this Court Room.

Q. Did you observe any persons inside the place? You, yourself, did you observe anybody else inside the premises?

A. I did not, but Lieutenant Titler did.

Q. You did indicate you saw Mr. Laris and Mr. Mazza coming in and out?

A. Yes.

Q. But when you looked inside, you did not see them?

A. I did not, no.

Q. Did you see anybody, any other persons coming in or going out that night?

A. A few individuals which I couldn't identify.

Q. Where was this table that you referred to seen?

A. The table would be along the wall opposite the front entrance.

Q. Was the table being used at all that night, June 14, 1963?

A. Not that we could observe.

Mr. Tocci: Mr. Herman, would you mark the table, please.

[78a] (Commonwealth's Exhibit No. 2, being a dice table measuring 12 feet by 4 feet, was produced and marked for identification.)

By Mr. Tocci:

Q. I show you Commonwealth's Exhibit No. 2 for identification. Is this the table you referred to in your testimony?

A. Yes, it is.

Q. Was this the way that you saw it that particular night on these premises?

A. Well, whenever we observed it on the premises, it had a stand on which that table rested. It's a frame with legs that fit underneath the table. Due to the fact that it

was so bulky and it wouldn't serve any purpose here, we didn't bring it up.

Q. In other words, it was this table plus a stand upon which this table stood?

A. Yes.

Q. And that is the same table you saw that night?

A. Yes. I might add that if you observe the inside portion of the table, pieces of it have been chewed up, evidently from rodents or squirrels or something, and also, on the inside, some of the plastic had also fallen over which was due to exposure of the cold and damp weather when it was laying inside the garage

Q. Where has this table been since June, 1963?

A. On the State Police premises in Chippewa.

Q. In other words, what you are saying is when it was taken into your possession, it was not in the same condition it is now?

[79a] A. No.

Q. What condition was it in?

A. It had a rubber strip stretching up through the middle of the table from the narrow portion of the table and it didn't have the marks of rodents and it was in better condition than it is now.

Mr. Tocci: I would ask, at this time, your Honor, that the Jury be permitted to leave the Jury Box and examine the table and then to be taken downstairs to where we have the legs of the table and have said legs marked as an exhibit in this case.

The Court: Mr. Conte?

Mr. Conte: We have no objection, however, I think if we are going to use the table, we ought to use it with the legs on it.

Mr. Tocci: I think there is no purpose in that.

The Court: I take it, for the record, Mr. Tocci,

you will later describe the size of the table for the record?

Mr. Tocci: Yes, your Honor.

The Court: Realizing the table is relatively large and the area in this Court Room is relatively small, we [80a] are going to grant the Commonwealth's request and the members of the Jury may examine the table as it sits here in the Court Room and then proceed to the basement where I understand the frame and legs are.

Mr. Tocci: It was moved out to the front lawn.

The Court: Very well. You may proceed.

(Whereupon, the Jury leaves the Jury Box and examines Commonwealth's Exhibit No. 2, thence proceeding to the front of the Court House to examine legs of Exhibit No. 2 which will be marked as Commonwealth's Exhibit No. 3.)

(Commonwealth's Exhibit No. 3, being legs of table, was produced and marked for identification.)

(Whereupon, the following transpired in open court before Judge and Jury:)

By Mr. Tocci:

Q. Now, Trooper Valent, we have been downstairs and observed a set of legs. Were those the legs upon which this table rested?

A. Yes.

Q. Now, the way they were laying down there, I assume they were on their side, is that correct?

A. On its side, yes.

Q. What about their condition now? Has it changed since the time you took it into your possession?

[81a] A. At the time the table and frame which supported the table was confiscated, it was in good condition.

The formica was polished; the green felt at the bottom of the table was in excellent condition.

Q. Now, how was this placed upon the legs? I'm sure the Jury can figure it out, but can you explain how this table and the frame made up a unit?

A. The base with the legs is placed on the floor and the table is placed on the framework.

Q. Can you describe briefly and generally the premises themselves?

A. The premises is a one story concrete block building wihch is divided into approximately five rooms. The largest of these rooms was the area where the game was being conducted. That's where this table was.

Q. Now, when you looked through the window on June 14, what room was this table in, this table we have marked as Commonwealth's Exhibit No. 2?

A. The table was in the large room and was next to the wall through which the window was located, through which we could look into the room.

Mr. Tocci: I would like to move Commonwealth's Exhibits No. 2 and No. 3 be admitted into evidence, your Honor.

The Court: Mr. Conte?

Mr. Conte: We have no objection to that, your Honor.

[82a] The Court: Commonwealth's Exhibits No. 2 and No. 3 are admitted into evidence.

By Mr. Tocci:

Q. Now, as a result of this observation by you and Officer Titler, what did you do subsequent to June 14th?

A. We left the area since there was no gambling going on that we could observe. We left that area.

Q. Did you have an opportunity to return subsequent thereto?

A. Later information came to the attention of these officers and I was advised of the information and then myself and Trooper McClosky returned to the area.

Q. When was that?

A. That was on the evening of June 22, 1963.

Q. About what time did you arrive at these premises?

A. We arrived in the area approximately 9:30 p. m.

Q. How did you get there?

A. By automobile.

Q. In a private automobile or a State Police car?

A. An unmarked State Police car.

Q. Were you in civilian clothes or uniform?

A. We were attired in civilian clothes.

Q. What did you do when you arrived at these premises?

[83a] A. We walked from the Big Sewickley Creek Road into a wooded area, which is on a hillside overlooking the garage and cement block building.

Q. About how far were you from the garage?

A. Approximately 100 feet.

Q. What did you do and where did you go from that area?

A. From within the woods, we could observe the action that was taking place at the garage and in the area.

Q. Tell the Jury generally what you observed that particular night, June 22nd?

A. On that evening, we observed Jack Mazza coming and going into the building—coming out of the building and standing around watching. We observed several cars pulling up to the front of the door where the occupants of the car had some conversation with Jack Mazza. They then parked the car and proceeded inside.

Q. Can you recall approximately how many cars came up while you were there watching?

A. Several cars came up while we were in position on the hillside.

Q. From this position on the hillside, could you see inside the premises?

A. We could see inside the garage because the large overhead doors were open.

Q. What did you observe from that distance that night?

A. We couldn't observe anything from that point.

[84a] Q. Now, June 22, 1963, that was a Saturday night?

A. Yes, Saturday evening.

Q. Then, I assume on June 14th, that was a Friday evening the week before?

A. Yes.

Q. After you observed these several cars coming and the people going inside, what did you do?

A. Trooper McCloskey and myself made our way to a point in the back of the cement garage building, from which point we could overhear what was going on inside.

Q. How far from the building were you?

A. We were right up against the window.

Q. Were you and Trooper McCloskey there on orders from Officer Titler?

A. Yes.

Q. Now, what did you hear from where you were standing?

Mr. Conte: We object to what they heard unless they can show that was all within the presence of defendant George Laris. Otherwise, it is all hearsay to him.

Mr. Tocci: That's not correct, your Honor, my understanding is whatever he can see or hear or touch or smell, they are all admissible.

The Court: The objection is overruled.

[85a] By Mr. Tocci:

Q. What did you hear?

A. We heard cards being shuffled and we could hear loose silver change being thrown on a table or thrown in some location, but we heard the silver and cards.

Q. At this time, did you observe anything inside?

A. No.

Q. After what you observed from the hillside and after you heard what you told us you heard, what did you and Trooper McCloskey do?

A. Trooper McCloskey and myself left the area and we proceeded to a point in Ambridge.

Q. What did you do there?

A. From that point, we called headquarters in Butler where I advised Lieutenant Titler what we seen and what we heard.

Q. Did you arrange any meeting or any other arrangement with Lieutenant Titler?

A. Subsequently, we met a detail of other men at the Warrendale State Police Sub-Station.

Q. How many men did you meet there?

A. We had a total of six men.

Q. What was the purpose of the meeting?

A. The purpose of the meeting was to formulate plans for a raid on the premises along the Big Sewickley Creek Road.

Q. What time of the night or morning was that when you met at Warrendale?

A. This was in the neighborhood of 1:00 o'clock.

Q. Now, we are speaking of June 23, 1963?

A. That's correct.

[86a] Q. So, this surveillance and this testimony that you are now giving us began on Saturday evening, June 22nd and ran into the early morning of June 23rd?

A. Yes.

Q. Now, what did you do? What instructions did you receive or what did you do from the Warrendale barracks?

A. After the plans for the raid were formulated, Trooper McCloskey and I proceeded to the office of Justice of the Peace Frank Storar's in Baden, Pennsylvania, where body warrants for the arrest of Jack Mazza and George Laris were obtained and search warrants for the premises.

Q. Just the two of you went to the squire's office?

A. Yes.

Q. What about the other troopers?

A. The plan was for us to meet the other troopers at the Brookside Theatre a drive-in theatre a short distance from this scene.

Q. Did you meet there?

A. Yes.

Q. Now, from there, did you go directly to the scene of where this charge was made?

A. Yes.

Q. How did you get from the Brookside Drive-In to this building in Economy Borough?

A. We proceeded by a station wagon owned by the Commonwealth.

Q. Were you all in a station wagon, all being in one vehicle?

[87a] A. Yes.

Q. Was it marked car?

A. No.

Q. Were any of the Troopers in uniform?

A. Only one man was in uniform.

Q. What was his name?

A. Trooper Barr.

Q. Do you know where he is now?

A. He is stationed at Warrendale.

Q. At the present time?

A. I'm not certain of that, but he's not available.

Q. But all the rest of the troopers were in civilian clothes?

A. Yes.

Q. What did you do when you arrived at the premises in Economy Borough?

A. The five of us, including the trooper in uniform, proceeded off the Big Sewickley Creek Road and into the wooded area overlooking the cement garage building. Lieutenant Titler was driving the station wagon and he proceeded on and parked the vehicle and later met us in the rear of the building.

Q. Did you have any idea of where he parked?

A. No, I don't.

Q. Now, did you do anything until Trooper Titler arrived or did you just wait for him?

A. We conducted also a surveillance and we made our way into the rear of the building where we met Lieutenant Titler.

Q. What did your surveillance indicate? What did you survey and what did you see?

[88a] A. By looking in through the window, it was blacked out and what material was used to black it out, we don't know.

Q. Before you went up to the window, did you survey the premises generally?

A. We also observed cars coming on to the premises.

Q. Did you watch that happen?

A. Yes.

Q. Describe to the jury what would happen when a car came up to the premises?

A. The car would stop in front. A man would come up to the car and have some conversation with the driver

and with the occupants and then the occupants would get out and then the driver would park the car and he would also go inside.

Q. Did he go inside after they did or before they did or at the same time?

A. The man who talked to them outside, he waited until the party was together and then he went inside.

Q. In other words, he went in with them?

A. Yes.

Q. Ahead of them?

A. Yes.

Q. How many cars did you observe this happening to?

A. As I recall, I observed approximately three cars.

Q. Then, I think you already started to tell us you went up to the building and looked through the window?

[89a] A. Yes.

Q. What did you observe?

A. In order to look into this window, we had to boost each other up. There was a small crack at the top, through which you could see. However, you couldn't see all the activity inside. You could see the number of men there, but you couldn't see what they were doing.

Q. Could you see approximately the number of men there?

A. The way I could describe it, I would say it was a large number.

Q. Now, could you, from your own observations, could you tell what they were doing?

A. From the point where I was looking from, I couldn't determine definitely what they were doing.

Q. Now, were there other places where you could look into the building that other troopers were using?

A. You could also look in through this window through another crack which was at the bottom of this window.

Q. Did you do that or did you just look through the top?

A. I looked through both portions, sir.

Q. What did you see from the bottom opening?

A. I could see the table, I could see the dice rolling. However, I couldn't see who was rolling the dice or who the men were that were standing around.

Q. Now, when you say "the table", are you speaking of Commonwealth's Exhibit No. 2? Is that the table you are referring to?

A. Yes.

[90a] Q. Did you see the defendant, Mr. Laris, at that time?

A. No, I didn't.

Q. Now, what did you do after you and the other officers observed what was happening inside?

A. We made our way around to the side and to the front where we found a station wagon parked with one occupant in it. It was parked directly in front of the doorway.

Q. Did you have any conversation with the occupant or what did you do then?

A. Well, from this point, Lieutenant Titler proceeded forward and then identified himself to the occupant of that car who later identified himself as Albert Szuchy of Ambridge and he was then taken into custody.

Q. Had you seen he or his station wagon before the time Titler identified himself?

A. We observed the station wagon there immediately after we arrived at the scene.

Q. What was it doing?

A. It was parked diagonally with the garage door.

Q. Was that the normal way to park it?

A. Well, in comparing with other vehicles parked, they were parked away from the entrance.

Q. Would there be any reason for this car to be parked directly across the doorway?

Mr. Conte: I object to that. He is drawing a conclusion and that's for the Jury to do. Normal—normal [91a] to whom? I might park it differently than you and I consider myself normal and so do you.

Mr. Tocci: I will withdraw the question.

By Mr. Tocci:

Q. Describe how the car was parked in relation to the other cars and to the building?

A. The other cars were parked in such a manner that they wouldn't block the doorway or the entrance leading to the concrete garage building. In other words, the majority of them were parked 25 or 30 feet away from the entrance; parked along side each other. Now, this car, the car this man was in, he was parked diagonally across the entrance to the garage. In other words, he was blocking it so no car could pull into the garage. It was a double stall garage.

Q. In other words, if you wanted to pull into the garage, you couldn't because this car was blocking it?

A. That's correct.

Q. Now, you testified earlier that when you arrived you saw this station wagon, you saw this man talking to people. Was this the same man you saw escorting people into the premises?

A. Yes.

Q. Did you subsequently ascertain who owned the station wagon?

A. The station wagon was owned—it was later identified as being owned by George Laris.

Q. What happened when Titler identified himself to the man who was by the door?

[92a] A. He was taken out of the station wagon and taken inside the garage.

Q. And, did you then get into the premises at all?

A. Entrance was gained by going through two doorways, the second door being opened by Lieutenant Titler. In other words, he lead us into the main room where the gambling was going on.

Q. How did he get in?

A. The second door was forced open.

Q. By whom?

A. By Lieutenant Titler.

Q. Now, once you got inside, what did you observe?

A. Well, I was about the third or fourth man in and we could observe quite a bit of commotion, men rushing every direction and whenever I spotted the dice table, why, Lieutenant Titler was laying across the top of it and ordering everybody away from the table.

Q. Did you confiscate any materials that morning?

A. Yes.

Q. Do you have them here in the Court Room?

A. Yes.

Mr. Tocci: Would you mark these, please.

(Commonwealth's Exhibit No. 4 being two dice cups and four dice, was produced and marked for identification.)

[93a] (Commonwealth's Exhibit No. 5, being four decks of playing cards, was produced and marked for identification.)

(Commonwealth's Exhibit No. 6, being a door knob with shaft attached, was produced and marked for identification.)

(Commonwealth's Exhibit No. 7, being door bell buzzer, was produced and marked for identification.)

(Commonwealth's Exhibit No. 8, being $34.35 in

coin and currency, was produced and marked for identification.)

(Commonwealth's Exhibit No. 9, being poster entitled, "Hard Ways", was produced and marked for identification.)

By Mr. Tocci:

Q. I show you Commonwealth's Exhibit No. 4 for identification. Can you describe what this is?

A. These are leather cups, commonly known as dice cups.

Q. Where did you find those?

A. These were located on the dice table. I did not—Lieutenant Titler had taken these into his custody. They were turned over to me by Lieutenant Titler.

Q. Inside these cups there's dice, is that correct?

A. Yes.

Q. I show you Commonwealth's Exhibit No. 5 for identification. Obviously, those are playing cards. Where did you find those?

A. These are regular playing cards and they [94a] were located in the kitchen portion of the separate room from where the dice table was.

Q. Were there any persons in that room when you got there?

A. None that I know of.

Q. I show you Commonwealth's Exhibit No. 6 for identification. Can you describe what that is and where you found it?

A. As you can see, it is a regular door knob and this door knob was located in Albert Szuchy's car. He's the man we described as being the guard to the premises.

Q. You seized his car?

A. It was the car he was sitting in.

Q. That's the station wagon you testified to?

A. Yes.

Q. Mr. Laris's car?

A. Yes.

Q. But it was found in that car?

A. Yes.

Q. Did you ever see this particular door knob being used in any way?

A. I did not observe it being used.

Q. Commonwealth's Exhibit No. 7, can you identify that?

A. That is an electric buzzer which was found near one of the door ways or on one of the door ways, I'm not sure which.

Q. This was found on the premises by you?

A. Yes.

Q. This particular one?

A. No, it was located by Lieutenant Barger.

[95a] Q. Commonwealth's Exhibit No. 8 for identification?

A. This is silver and which amounts to $34.35. This was taken off the table top which you see in front of you.

Q. And Commonwealth's Exhibit No. 9 for identification?

A. This is what we call a Hard Ways Chart, which is used to determine the bet placed when the dice are rolled.

Q. Where did you find this?

A. This was located by Lieutenant Titler.

Q. Did you see where he found this?

A. No.

Mr. Tocci: If the Court please, although some of these exhibits technically wouldn't be admitted now, I would like to move their admission now subject to the proper foundation made by other Troopers.

Mr. Conte: No objection, your Honor.

The Court: Commonwealth's Exhibit Nos. 4, 5, 6, 7, 8, and 9 are received subject to the proper identification.

By Mr. Tocci:

Q. Some of these exhibits you found and some were found by other troopers and given to you, is that correct?

A. All the exhibits that are located there were [96a] given to me by either Lieutenant Barger or Lieutenant Titler.

Q. And they have been in your possession and under your supervision since?

A. Yes.

May I add, the dice in those cups, they were located separately and they were in a partially filled paper cup of coffee. The cup of coffee was laying on a shelf in the room near the table.

Q. Now, you say the dice were in a partially filled cup of coffee?

A. Yes.

Q. Both sets or one set or just one dice?

A. Yes, both sets.

Q. They were submerged in the coffee.

A. Yes.

Q. Now, after you and the other officers broke into this place and confiscated these exhibits, what did you do?

A. I immediately, after entering the room, I immediately located Mr. Laris and Mr. Mazza and I read the warrant for their arrest, also the search warrant for the buildings.

Q. And based on what you had observed on previous occasions and what you had observed on that particular morning, did you file that information against them?

A. That's correct.

Q. Now, this block building that you are referring to, is that the same one Mr. Weinman was referring to?

A. Yes, it is.

[97a] Q. And that's in Economy Borough, Beaver County?

A. Yes.

Mr. Tocci: Cross examine.

The Court: At this time, we'll take a recess.

(Whereupon, at this point in the proceedings, a recess was taken. After said recess, the following proceedings were had):

CROSS-EXAMINATION by Mr. Conte:

Q. Trooper Valent, as I understood your testimony, this concrete or cement block building was divided into five rooms, approximately, is that correct?

A. Yes.

Q. And the table was in the biggest room?

A. That's correct.

Q. And that room was about what size?

A. I can't give you the measurements, but it was a large room, approximately the size of this Court Room, if not bigger.

Q. It was at one time used for a dancing pavillion, is that right?

A. It's possible.

Q. Now, the smaller rooms, each one had a partition wall, is that correct?

A. Yes.

Q. Now, there were at least two doors I heard you testify to to get into this building, is that right?

[98a] A. Yes, to get into the large room.

Q. There were probably other doors in the small rooms and in other portions of the building?

A. It's possible there were other doors, but those were the doors we were concerned with at the time.

Q. Now, from your first surveillance point, as you put it, approximately 100 feet from the building, if a person went inside this concrete building or block building, you couldn't tell what room he went into, could you?

A. He would have had to first go in through what was at one time a two stall garage.

Q. And from there, you couldn't tell where he went?

A. From there, he would have gone into what was a furnace room and from that furnace room, he went into a room which consisted of lavatories and also a kitchen and the second door led into the large room.

Q. But as you said, there were also doors leading to the smaller rooms?

A. These are the doors I'm speaking of.

Q. So, a person could have been in any of the five rooms inside, is that correct?

A. It's possible that a person could be in those rooms, yes.

Q. So, when you saw Mr. Laris go in and out of this building, you don't know which of the five rooms he was in?

A. No, I don't know which of the five rooms he went into.

[99a] Q. As I recall, Firemen's Park sits at the "Y" of the road, is that correct? One side is Big Sewickley Creek Road and on the other is Big Sewickley Creek?

A. Big Sewickley Creek Road, you say?

Q. Yes.

A. It's past the entrance of what was formerly called Firemen's Park.

Q. On the one side there was the road and on the other side you had Big Sewickley Creek and this property sat in the center. Would that be a fair description?

A. You could describe it that way, yes.

Q. And you were on a hillside inside the property from the first viewpoint?

A. Well, I'm not that familiar with the property, whether or not the hillside blends into the property or not. I don't know, but we were on the hillside.

Q. Anyway, you were there on June 14th, along with another officer and you found nothing suspicious that made you want to stick around, is that correct?

A. We found activity that made us suspicious, but after we checked into it, we found nothing that could be construed to be gambling.

Q. All right. That's what I'm getting at. You found nothing that would have anything pertaining to gambling on your first visit on which information you could have made any arrests or filed for a warrant?

A. Yes, that's right.

Q. And at that time, in addition to being on the hillside, you even went up to the building and looked into the windows, is that right?

[100a] A. We went around to the side and around in back of the building.

Q. You looked into the building somehow, didn't you?

A. Pardon?

Q. You looked into the building on June 14th, didn't you?

A. Lieutenant Titler did, yes.

Q. And both of you left and at different times both of you arrived there on the 23rd, the 22nd and the 23rd?

A. This was a continuation of the same evening.

Q. This was, the 22nd running over into the 23rd, wasn't it?

A. Yes.

Q. From the evening into the early morning?

A. That's correct, yes.

Q. Now, also on June 22nd, I believe you again stated you first noticed the premises from 100 feet away and at that point you could not see anything that was going on inside the garage, is that correct?

A. We could only observe people going into the garage portion, that's all we could see from the hillside.

Q. In other words, there was nothing unusual about them going in and out of this garage and it would be like you going in and out of your house, is that correct?

A. Unless you want me to stipulate. We had prior information that gambling was going on.

[101a] Q. Answer my question, please. You just answer the questions.

I asked you if these people you saw were going in and out the same as you could see them going in and out of any other building?

A. There must have been something going on. This wasn't an amusement place and this wasn't a theatre or a store. This wasn't—

Q. I'm not asking you for your suspicions. Was there anything unusual about the way they went in and out of the building?

A. We observed people going in and out of the building.

Q. Was there anything unusual about people going in and out of the building?

A. To me, yes.

Q. What?

A. It was the way they were—

Q. You're just guessing.

A. I'm not guessing, it wasn't any place of business.

Q. Trooper Valent, I'm not suggesting anything, but I want you to be fair. I want—

Mr. Tocci: I think he's answered the question. It's not the kind of place where men would go in.

Mr. Conte: That's your opinion.

Mr. Tocci: That's my opinion.

[102a] The Court: Let's not have any arguing now, gentlemen. As we understood your questioning, you asked what was unusual to the trooper and he has answered your question.

Mr. Conte: Of the way they walked in and out, your Honor.

The Court: That's right.

By Mr. Conte:

Q. You took a closer look to the building, right?

A. Yes.

Q. There was no question at that point that you were on the property when you went right up against the building?

A. I would assume we were on the property, yes.

Q. You were not on a public road, were you?

A. No.

Q. And at that point of time, you saw nothing inside but you hear the shuffling of cards and silver being dropped on the table?

A. Which time are you referring to?

Q. I thought we were talking about June 22nd and 23rd.

A. Yes, I overheard the shuffling of cards and the rattle of silver. I cannot say that it was on a table, but it was the rattle of silver.

[103a] Q. And you don't know who was shuffling cards and you don't know who was rattling the silver?

A. No.

Q. You don't know who was rolling any dice at that time?

A. I couldn't determine any dice being rolled.

Q. That's when you and Trooper McCloskey left?

A. Yes.

Q. Approximately what time was that? Was that before midnight or after midnight?

A. It would have been shortly after midnight, shortly after midnight, shortly after midnight, approximately.

I'll take that back, if I may. This was shortly before midnight that we left, but we contacted Lieutenant Titler and it was still the 22nd of June.

Q. And from there you went to the squire's office after you contacted Lieutenant Titler?

A. No, we proceeded to the Warrendale Sub-Station where we met other officers from Butler, among which were Lieutenant Barger and Lieutenant Titler and Trooper McCloskey and also a Trooper Barr.

Q. Then, it was after that that you went to the squire's office?

A. We went to the squire's office from the Warrendale Sub-Station.

Q. That squire, does he have offices in Baden, is that correct.

A. His office is in Baden, yes.

[104a] Q. There were squires in Economy Borough, is that correct?

A. I would imagine, yes.

Q. You will agree that Frank Storar was not the nearest available squire?

Mr. Tocci: We'll object, your Honor. There was no necessity for him to go to the nearest available squire.

The Court: Objection sustained.

By Mr. Conte:

Q. Now, approximately how many men were in this room after you entered the premises with the warrant?

A. Approximately 31 men in the room.

Q. Did you take the names of these people?

A. Yes, I did.

Q. And did you group them up to take their names and get this information for forfeitures from them?

A. The men were all put into one group and one by one they were sent to a small table where I had taken their names and addresses, where most of them showed me their identification and so on.

Q. Did they pay any money?

A. They were required to post bond for a hearing at a later date.

Q. That would be what, $20 or $10?

A. It was around $13, if I'm not mistaken.

[105a] Q. In other words, you treated these people differently than Mazza and Laris? You treated Mazza and Laris as establishing a gambling house and these others as players?

A. Yes.

Q. And no warrants were issued against the players?

A. They were all charged with gambling and they did not show up for hearing and their bonds were all forfeited by the Justice of the Peace.

Q. And that's the end of their cases?

A. Yes.

Q. Now, when you broke in, you said you had a search warrant?

A. Yes, I did.

Q. Do you have that here?

A. I don't have it. The entire paperwork, the warrant and the sarch warrant were turned over to the Justice of the Peace which were turned over with the indictment.

Mr. Conte: Are you going to put in the search warrant to complete the record?

Mr. Tocci: I wasn't going to.

Mr. Conte: Just so long as we can stipulate what's in there.

Mr. Tocci: There are other proceedings showing that.

(Discussion off the record.)

[106a] By Mr. Conte:

Q. Now, as I understand it, you ran into Mazza and Laris?

A. Yes.

Q. And that's when these other people paid their $13 fines and forfeitures, some of these people paid their own fines themselves and the rest of the money Jack Mazza put up, is that correct?

A. Either Jack Mazza or George Laris put up all of the bonds.

Q. Now, you were present and testified at the preliminary hearing in front of Justice of the Peace Frank Storar?

A. Yes, I was.

Q. In Baden, Pennsylvania, on June 25, 1963, is that correct?

A. I testified at the hearing, but I'm not sure what the date was.

Q. Do you remember a stenographer being there and taking down everything you said?

A. Yes.

Q. All the questions I propounded to you?

A. Yes.

Q. Did I ask you this question—

Mr. Tocci: Before you ask the question, I want to be sure it's germaine to the proceedings.

Mr. Conte: These proceedings—

Mr. Tocci: I would like to ask for an offer at side bar.

[107a] The Court: The request is granted.

(Whereupon, the following transpired at side bar:)

Mr. Conte: I object to this side bar conference, because the law, as I understand it, I'm not required to make an offer as I'm cross examining the witness. I think it loses it's value and I'm at a disadvantage. My purpose in cross examining in a pre-trial hearing is if I asked him certain questions and if he made certain answers, and it is for the purpose of impeaching credibility.

Mr. Tocci: I think the issues would have to be germane to what we're trying today. I have no way of knowing what question is going to be asked and if it should be prejudicial, it's going to be too late after he asks the question.

The Court: The objection is overruled.

Our ruling was that the defendant's objection to the district attorney's request is overruled. The request is granted and defendant's counsel is directed to make an offer at this time as to what he intends to prove at this time.

Mr. Conte: I intend to prove by my cross examination of this witness the inconsistency of the statements [108a] he made on June 25th, which are inconsistent to what he testified to on the stand now.

Mr. Tocci: Are those matters germane to the issue?

Mr. Conte: They are germane to the issue, in my opinion, but they are in contrast to what he testified to on June 25th.

The Court: What questions are they?

Mr. Conte: We would have to take a 15 minute recess while I run through here and find the questions.

The Court: Don't you have the questions marked?

Mr. Conte: No, I don't. He said he read the warrant to Laris and he testified that he read to Mazza only, on June 25th. He stated that Laris paid some of the forefeitures now and on June 25th, Mazza was the only one.

These are all pertinent questions, because at that time, based upon what his testimony was, Laris was not even there. There was nothing to differentiate from him from a player.

The Court: Those two are proper and may be read.

[109a] Mr. Tocci: And I have no objections to them.

Mr. Conte: That's all I can think of right now.

The Court: Very well.

(Whereupon, the following transpired in open Court before Judge and Jury:)

By Mr. Conte:

Q. Trooper, on page 18 of this transcript of the Justice of the Peace hearing, we're talking about forfeitures and I asked you this question. Do you recall this question being asked by me and you giving the answer I'm about to read? The question and answer were:

"Q. You recall how this came about? Did each individual person pay his own forfeiture?

"A. Mr. Mazza had paid most of the forfeitures for the men that were there.

"Q. You saw that personally yourself?

"A. Yes.

"Q. And the others paid it themselves?

"A. Yes."

A. Yes.

Q. On that date, did I ask you those questions and did you give those answers?

A. It's in the transcript, so I must have given those answers. I don't recall.

Q. It's in the transcript and I just showed it to you, is that correct?

[110a] A. Yes.

Q. Now, today you said Laris paid some forfeitures. Answer this. Would your memory be better two days after the raid or four years later?

A. It would have been better if I had read the transcript before the trial.

Q. Surely it would have been better.

Now, today, you also stated you read the search warrant to Laris, I believe? Were these questions and answers given at that hearing?

"Q. Then you singled out Jack Mazza and read the search warrant to him?

"A. Yes, sir.

"Q. You didn't read it to Albert Szuchy?

"A. No, sir.

"Q. You didn't read it to George Laris?

"A. I read the warrant to—

"Q. Jack Mazza?

"A. —Jack Mazza.

"Q. According to the paper, there were twenty-nine other people in there, and, of course, you didn't read it to the twenty-nine other people?

"A. They overheard what was being read. I read directly to Mr. Mazza."

Mr. Tocci: I'll object to that. He said he read the warrant and Mr. Laris was within hearing distance. He said he read it to Mazza and that Mr. Laris was within hearing distance.

Mr. Conte: Wait until I get through, please.

[111a] By Mr. Conte:

Q. Is that correct?

A. That's what the transcript has.

Q. And what I've read you now is what was in the transcript, I read the transcript correctly?

A. Yes, you did.

Q. And at that time you testified you read it to Jack Mazza and you did not read it—

Mr. Tocci: I object, I renew my objection.

Mr. Conte: It's right here in the transcript.

Mr. Tocci: No, it's right here.

The Court: Of course, the question of what is stated in that transcript and whether that is any different from his testimony today, that is a question for the members of the Jury. It's our recollection this is substantially similar to what's in the transcript. However, this is a matter for the members of the Jury to determine and if it is their recollection of what the trooper said today and what is in the transcript and the members of the Jury must determine that from their recollection of what has been said then and what is said today.

The objection is overruled.

[112a] By Mr. Conte:

Q. Trooper, from what you say, that evening, there was nothing to distinguish George Laris's activities from any of the other players. You did not see him with the dice, did you?

A. On the evening of the 22nd?

Q. As I understand it, that was the only time that gambling was in progress, is that correct? June 14th, there was no gambling in progress, wasn't there?

A. We didn't observe any, no.

Q. Getting back to the 22nd and 23rd, you didn't see Mr. Laris pay any money to anybody for gambling, did you?

A. Did I personally see him pay anybody money for bets, no, I didn't.

Q. You didn't see him roll dice?

A. No, I didn't.

Q. In fact, you didn't even see him in the game, is that correct?

A. I seen him in the building, near the table, around the table.

Q. Now, this is Commonwealth's Exhibit No. 9 which you described as a hard ways chart. You agree that this is a hand made hard ways chart?

A. It appears to be hand made, yes.

Q. Have you ever seen professional tables with hard ways charts written right on the table with a pass line and a don't pass line? Have you ever seen any of those tables like that?

A. Yes.

[113a] Q. They are part of the cloth that covers the table, is that correct?

A. Normally, yes.

Q. What's normally on the cloth of the tables?

Mr. Tocci: I object to that. He is asking questions this witness may or may not know and would not have any particular necessity to know.

Mr. Conte: You're using him as an expert.

Mr. Tocci: I'm not using him as an expert, no.

The Court: The objection is sustained.

By Mr. Conte:

Q. And, as I take it, the money that was found from playing dice on this table, this is all contained in Commonwealth's Exhibit No. 8, you said being $44 or $34 and some odd cents, is that correct?

A. $34.35, right.

Q. $34.35?

A. Right.

Q. And that's the only money that was confiscated?

A. Yes.

Q. And I suppose it's all made up of different denominations from 5¢ to—let's take a look at it.

So, you have silver ranging from 5¢ to a 50¢ piece and some paper money?

[114a] A. Yes.

Q. Did I understand you correctly, trooper, when you said there were only two spots on this window you could see through, one was on top and one was on the bottom and you looked through both of them?

A. Yes.

Q. And on top you couldn't see what the people were doing, but on the bottom, you did look there and were able to see dice rolling, is that correct?

A. As I recall now, that's the way it was, yes.

Q. Did these people have their backs to you when you looked through the bottom or were they facing you?

A. Well, the men that I observed, they were surrounding the table.

Mr. Conte: I believe that's all.

RE-DIRECT EXAMINATION by Mr. Tocci:

Q. I want to clear up one point, trooper. When you were there on June 14th, you saw Mr. Laris going into the premises and coming out of the premises. You testified to that?

A. Yes.

Q. And on the 14th, you also looked in the premises and saw this table?

A. Yes. I looked in the premises and I observed a table similar to that.

[115a] Mr. Tocci: That's all.

Mr. Conte: Nothing further.

(Witness excused.)

Mr. Tocci: Lt. Titler, please.

LIEUTENANT ROY L. TITLER, called as a witness on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Tocci:

Q. State your name, please?
A. Roy L. Titler.
Q. You are a Pennsylvania State Police Trooper?
A. Yes, I am.
Q. What is your rank?
A. I am a lieutenant, sir.
Q. Where are you stationed?
A. Regimental Headquarters, Harrisburg.
Q. Where were you stationed in June, 1963?
A. At the Butler Barracks, sir.
Q. Were you involved in any investigations in Beaver County at that time?
A. Yes, sir, I was, gambling, sir, of formerly the [116a] Ambridge Fireman's Park; this case we are talking about now, sir.
Q. Did you have men working under you at that time?
A. I was working under Detective Sergeant Barger at that time. I was a detective and I was working with Trooper Valent and Trooper McCloskey and the other men.
Q. When were you first to the premises we are speaking of today, the first time there?

Mr. Conte: Wouldn't that be June 14th, the same time as Valent, June 14th?

Mr. Tocci: I thought this was direct examination, Mr. Conte. I thought I was to ask the questions and the witness was to give the answers.

Mr. Conte: Yes, but let's get on with it. The testimony shows that the investigation was on June 14th.

The Witness: I had been to the premises prior to that date on this investigation, sir.

By Mr. Tocci:

Q. We are speaking of the cement block building.

A. Yes, sir, I had been there.

Q. You were there prior to the 14th?

A. Yes, sir.

Q. What were you doing then there?

[117a] A. I was looking at the building with an informant who was pointing it out to me.

Q. Did you, consequently, put the building under your surveillance yourself?

A. Yes.

Q. When?

A. June 14th, sir.

Q. With whom?

A. Trooper Valent.

Q. And what time was that?

A. Shortly after 9:30 in the evening.

Q. You and Trooper Valent came there in the same car?

A. Yes, sir.

Q. What did you do then?

A. We parked the car and walked to the wooded area near the Big Sewickley Creek Road and parked. We parked the car and we walked to the wooded area and proceeded to watch the building and watch the activities around that building.

Q. About what distance were you?

A. About 100 feet but as the evening wore on, I went down the hill, I worked my way down the hill until I was sitting behind the entrance way and directly across the roadway, sir, and I would say it was 30 to 35 feet.

Q. You and Trooper Valent were seated together?

A. Yes, sir.

Q. What did you observe seated there?

A. I saw Jack Mazza there and I saw a red headed young fellow there.

[118a] After we were there, Mr. George Laris drove in, sir, and met with these gentlemen and walked to the building and later in the evening we went down along the creek bottom and went behind the building and looked into the building and looked in through the windows to the rear of the building and saw this crap table sitting there—

Q. You are speaking of Commonwealth's Exhibit No. 2?

A. Yes.

Q. How was it situated there?

A. On its legs.

Q. You're speaking of Commonwealth's Exhibit No. 3?

A. Yes.

Q. What was the condition of the table then?

A. It was in good shape, sir.

Q. Not like it is now?

A. No, now it's battered, sir.

Q. What did you see inside?

A. I saw Mr. Laris and Mr. Mazza.

Q. What were they doing?

A. They were standing near the kitchen and they walked into the kitchen portion and walked around and talking.

Q. Could you hear what they were doing?

A. Mr. Laris was going about the food he brought and they were making sandwiches.

Q. Did you see or hear anything else that night that was different or unusual?

A. No, sir, just—no, sir.

Q. Did anybody else come?

[119a] A. There was one other man there, but who he was, I do not know.

Q. Did you have an opportunity to go back to the premises again?

A. Yes, sir, I did.

Q. When was that?

A. The early morning hours of June 23rd.

Q. Was there anything on June 14th that led you to believe—

Mr. Conte: That's calling for a conclusion, your Honor.

Mr. Tocci: I'm asking his opinion—

Mr. Conte: He testified to what he observed and heard.

Your Honor, he can testify to what he heard and observed, but not what he believes.

The Court: That's correct. The objection is sustained.

By Mr. Tocci:

A. I saw that table, sir.

Q. On the 14th, you saw that table?

A. Yes, sir, and I saw a table very similar to this one that had previously been used in a dice game in our county.

Q. When was it you returned to the premises?

A. I returned to the premises after midnight—this would be the early morning hours of the 23rd, sir.

Q. Who were you with?

[120a] A. When I returned to the premises, I had with me the raiding party. We were all in one car and I drove it and when I entered the premises, I was first, I was alone.

Q. Who was it you had with you?

A. There was Detective Sergeant Barger and Trooper Valent and Trooper McCloskey and Trooper Barr and Trooper Porter.

Q. Where is Barr stationed now?

A. In Washington, Pennsylvania.

Q. Now, you dropped all these persons off and parked the car somewhere?

A. I dropped the people off and parked the car far out of sight, so it wouldn't be so suspicious.

Q. And was it an unmarked vehicle?

A. Yes, it was.

Q. Were the troopers with you in uniform or in—

A. They were in civilian clothing.

Q. Then, what did you do?

A. I walked to the rear of the premises and met Lt. Barger and his detail.

Q. Now, where had you and the officers been prior to arriving there?

A. We had been at the Warrendale Sub-Station, had a conference on the situation and Trooper Valent and Trooper McCloskey had left, been detailed to go to the Justice of the Peace and obtain search warrants and body warrants and that left Porter, Barr and myself and Lt. Barger and we met them at this drive-in theatre.

Q. The Brookside?

A. Brookside, sir.

[121a] Q. That would mean that with you and Barger, that would make six, wouldn't it?

A. Yes. We met them at the drive-in theatre and they left their vehicle there and we all went together in the station wagon.

Q. When you arrived at the scene and everyone met together after the car was parked, what did you do?

A. Well, first Barger and Valent and myself went to the rear of the building and assisted each other in looking into the window.

Q. Did you look in the window?

A. Yes, I did.

Q. What did you observe?

A. I observed this table and just as Trooper Valent described to you, you could look in through two different places in the window and it was almost completely blacked out except for a small portion you could see through. We saw the men around the table when we looked in through the top, but when we looked in the lower part, you could see the crap table and the gabe going on, but you could not see whose faces were associated with the parties who were shooting crap.

Q. Were you able to recognize anybody by looking in?

A. I recognized about six people in there, sir.

Q. Were you able to recognize Mr. Laris?

A. Yes, he was there.

Q. What was he doing from what you could see?

A. Mr. Laris was standing against the table.

Q. Now, did you observe the outside of the prem-
[122a] ises generally before you looked in the window or after you looked in the window or at all?

A. Before and after, sir.

Q. Before you looked in the window, what did you observe about the premises and this set up?

A. The vehicles that were there and the place where they were parked and the red headed boy I had seen on the 14th was checking automobiles.

Q. From what you observed what did he do?

A. As the automobiles would come, he got out of the station wagon, walked to the automobiles, had some discussion with the occupants, had all the occupants except the driver get out and then the driver would go park the car while he and the other people in the car walked over to the building and wait for the driver and then when he would return to the group, the red headed boy led them in to the building and then he would come back outside and sit down in the station wagon.

Q. Is it possible to get into the building without going past this man in the station wagon?

A. No, sir.

Q. You indicated he would precede these people into the premises? Did he have a key or anything that you could observe?

A. This was my thought, but I did not observe it.

Q. How many cars did you observe approaching the premises and being treated in this manner?

A. I believe four or five, sir.

Q. How far were you from the place where they were going in the premises?

[123a] A. A very short distance from there. I was at the corner of the building.

Q. Then, you testified you did look in the windows?

A. Yes, sir.

Q. After that, what did you do?

A. We returned again and went around the building and I went to the station wagon, opened the station wagon. I identified myself, I told the red headed boy, I told him, "I'm Detective Titler of the Pennsylvania State Police. Give me the key to the door."

Q. Have you subsequently had an opportunity to determine who owned that station wagon?

A. I didn't check on that, sir.

Q. When you flashed your identification and badge at the boy in the station wagon, what did he do?

A. He grabbed the steering wheel and wouldn't move. I wanted him to give me the keys. As he did this (gesturing), I attempted to remove him from the vehicle and that was when the door opened inside the building and a man looked out and started to close the door and I shouted, "Police, this is a raid," and he slammed the door shut.

Q. How many doors were there, then, when you were going inside the premises?

A. There was one door that he slammed shut and there was one just inside that.

Q. Were they normal doors with door knobs and so on?

A. No, sir, the outside door, after you entered there, that door did not have a door knob on it.

[124a] Q. Was it possible to enter the place without breaking the door, since it didn't have a knob?

A. No, sir, it was not.

Q. Were you ever able to find a door knob to fit that door?

A. Yes, sir, there was a door knob found later in the vehicle, the station wagon outside, and you could open that door with it.

Q. Which vehicle?

A. The station wagon.

Q. I show you Commonwealth's Exhibit No. 6. Is that the knob that was found in the station wagon?

A. I believe it is, sir.

Q. Is that the knob that fits the door that didn't have a knob?

A. Right, sir.

Q. With this particular door knob, Commonwealth's Exhibit No. 6, did you open that door?

A. We did open the door, sir. We found it and put it in and turned as it normally should.

Q. All right, now. You said somebody opened the door and you said it was a raid and they slammed the door. What happened then?

A. I opened the door, sir.

Q. How?

A. I ran through it.

Q. You ran through the first door?

A. Yes, sir, and he was just closing the second door and he didn't get a chance to lock it and I ran through it and right up on the table. Lt. Barger was on my heels.

[125a] Q. The first door, you say you ran through it?

A. Yes, sir.

Q. Do you mean you broke it opened?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. And the second door?

A. He was just closing it and I just kicked it and ran right through.

Q. And you leaped on the table?

A. Yes.

Q. Is this the table here (pointing)?

A. Yes, sir.

Q. What happened after you got inside?

A. There was a general running around of the men that were there. Trooper Valent read the search warrant and after the warrant was read a search was made of the building for evidence of gambling.

Q. Did you conduct the search?

A. I did, sir.

Q. Was this under the direction of Lt. Barger?

A. Right.

Q. We have a series of exhibits here. Did you personally discover any of these?

A. I believe the dice cups were on the table and this hard ways chart was laying at the far end of the table.

Q. The dice cups are Commonwealth's Exhibit No. 4 and the chart is Commonwealth's Exhibit No. 9. You found these yourself?

A. Yes, sir. There was money laying around [126a] there that I directed it be picked up, but it was laying in a corner of the table.

Q. This money that is Commonwealth's Exhibit No. 8, you say this money was laying in a corner of the table?

A. Yes, sir. It is normal for this money to be there so that the house man or the man operating the game can make change.

Q. Was this money all over the table or—

A. The house money is kept separate by the house man so that he can make the change right there.

Q. I noticed most of it is in silver.

A. That is the usual procedure—

Mr. Conte: First you wouldn't let me go into it and—

Mr. Tocci: He is an expert witness, Mr. Conte. If you have an objection, please make your objection.

Mr. Conte: Go ahead and do whatever you want to do.

By Mr. Tocci:

Q. Lt. Titler, you are a member of the Pennsylvania State Police?

A. Yes, sir.

Q. And you have been for how long?

A. About 18 years, sir.

Q. During that time, have you made other arrests?

A. Yes, sir.

[127a] Q. During that time, were some of these arrests for charges similar to this?

A. Yes, sir.

Q. During that period of time, have you become familiar with the operation of games such as this?

A. Yes, sir.

Q. What is the normal operation?

A. There's a percentage of the money gambled that goes to the house and the normal percentage is two and a half cents on the dollar. It could be up to five cents on a dollar and it is quite normal for the house man to have

change so that the house may take its percentage from the money on the table.

Q. Now, the money then that was confiscated was the money at the corner of the table?

A. Yes, sir.

Q. All right. Now, what happened after you broke in and there was this general confusion?

A. The search warrants were read, both the search warrant and the body warrants and the persons that were in there gambling, they posted a forfeiture and were released. The evidence was gathered up and we removed the table and went to the Justice of the Peace where the charges were filed, sir.

Q. The evidence that you gathered up there and confiscated, was that then put into the control and supervision of Trooper Valen[illegible]

A. Right, sir.

Q. You had nothing to do with it since then?

A. No, sir, I did not.

Q. Now, other than Commonwealth's Exhibit No. [128a] 2 which is the dice table, what other furniture was in that room when you entered the room?

A. There were other chairs and small tables.

Q. What kind of tables?

A. The kind you would find in a restaurant, small tables for four. There were several of those and I believe there was one round table where several chairs were placed.

Q. Is there anything to indicate what type of business or activities these particular premises were being used for?

A. It was being used for a crap game.

Q. Was there anything else that showed it could be used for anything else?

A. It had been some time in the past used as a pavilion or a dance hall, I believe.

Q. But at the time of this arrest and raid on June 23, 1963, was there any evidence that it was being used for anything else?

A. No, sir.

Mr. Tocci: You may cross examine.

CROSS EXAMINATION by Mr. Conte:

Q. It's hot, lieutenant, so we'll make it short.

A. All right, Mr. Conte.

Q. On June 14th, the first time you were there, you saw only four men, Mr. Laris and somebody else?

A. Yes, sir.

[129a] Q. You say you saw Mr. Laris making sandwiches?

A. I didn't see him making sandwiches, he was carrying the bags and I heard him say he was going to make sandwiches. He was talking to—

Q. To who?

A. —Jack Mazza.

Q. And this here, this was the only money you say you saw on the table?

A. There was money on the table, but it was grabbed by the participants.

Q. You don't know how much?

A. No, sir. Once it goes into their pockets, it's rather difficult.

Q. You said you jumped on the table. This was a surprise to them?

A. Yes, sir. It was a surprise to them.

Q. And each man then grabbed his money?

A. This is normal.

Q. Now, both from your first surveillance being 100 feet away and also being close to the building, there is no question you were on the property itself? You were not on the roadway?

A. I was on the property, sir.

Q. Did you see a lease in existence on June 17, 1963, from George Laris and his wife—

Mr. Tocci: Your Honor, I'll object to that. It's outside the scope of the direct examination.

Mr. Conte: There's no question it is outside the scope. [130a] However, I know the trooper wants to go back to Harrisburg and instead of waiting around until I open my case tomorrow, I wanted to go on with the questioning I had planned for him. That way, he would not have to come back.

The Court: The objection will be sustained.

Mr. Tocci: The trooper has to be back in Harrisburg and he has to go back today.

Mr. Conte: Off the record, please.

(Discussion off the record.)

Mr. Tocci: I will withdraw my objection.

By Mr. Conte:

Q. You understand it is just so you won't have to stay around here any extra length of time?

A. Yes, sir, Mr. Conte.

Q. You did see a lease either in the possession of Laris or Mazza on June 17, 1963, before the raid, is that correct?

A. I don't believe it was in their possession, I believe it was in your possession.

Q. You didn't see me on June 17th, did you?

A. It wasn't in their possession—you say it's on the 17th, but I don't know whether either of those two men had it in their hand.

[131a] Q. That lease you saw was from Mr. and Mrs. Laris to Mr. Mazza?

A. Yes, sir, it was.

Mr. Conte: That's all.

Mr. Tocci: I want to ask that Lt. Titler will be

excused from the trial, so if you have any other questions, you know he is leaving.

Mr. Conte: That's all. He can leave.

(Witness excused.)

The Court: Court will recess until 9:15 tomorrow morning, members of the Jury. We caution you, as we have previously cautioned you, do not discuss this case with anyone; do not discuss it among yourselves; do not read any newspaper articles or listen to any radio or television accounts of what happened, and do not reach any conclusions until you have heard all of the evidence and the arguments of counsel and the Court has instructed you as to the law.

Court is recessed until 9:15 tomorrow morning.

[132a] At Court House, Beaver, Pennsylvania, Thursday, June 15, A. D., 1967, at 9:18 o'clock a. m.

The appearances are the same as hereinbefore noted.

Mr. Tocci: If the Court please?

The Court: Mr. Tocci.

Mr. Tocci: Lt. Barger, please.

LIEUTENANT JAMES D. BARGER, called as a witnes on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Tocci:

Q. State your name, please?

A. James D. Barger.

Q. And what is your profession?

A. I am a lieutenant with the Pennsylvania State Police.

Q. And where are you stationed at the present time?

A. I'm presently assigned as the commanding officer, criminal division at Greensburg.

Q. How long have you been a Pennsylvania State Trooper?

[133a] A. 26 years.

Q. And you were a trooper, I assume, on June 23, 1963?

A. At that time, I had the rank of Detective Sergeant.

Q. According to Lt. Titler, you were the highest ranking officer conducting that raid, is that correct?

A. That's right, sir.

Q. When did you first become involved in the raid on these premises? When did you first become familiar that it was going to take place?

A. I became familiar with it when then Detective Titler was going to conduct the investigation. This was in June, 1963.

Q. When was the first date you were at the premises?

A. The cement block building?

Q. Right.

A. My first visit there was the early morning of June 23, 1963.

Q. Up to that time, had you had reports from other officers?

A. I had, sir.

Q. Where were the plans formed?

A. At the Warrendale Sub-Station, Route 19.

Q. Who all was present?

A. Myself, Detective Titler, Trooper Valent, Trooper McCloskey, Trooper Porter and Trooper Barr.

Q. We already had testimony from the other troopers that you discussed this matter at Warrendale [134a] and you sent two troopers to obtain warrants and you met them at the Brookside Drive-In Theatre, is that right?

A. That is right, sir.

Q. What happened when you arrived at the premises?

A. We drove to an area near the premises and we all left the vehicle with the exception of Lt. Titler who parked it. We approached this building described through a wooded area which was between the road and the creek and —between the creek and the highway. We walked to a point on an embankment above the entrance to this building and we stayed there for approximately 15 to 20 minutes and we observed the cars coming to this building and what took place there.

Q. How far were you from that vantage point to the building itself?

A. Not more than 100 feet.

Q. What was observed?

A. We observed this new Pontiac Station Wagon which was parked. It was described as diagonal, but actually it was parked parallel with the building across the garage and a young man was observed sitting in the car and as a car would approach him, he would get out and talk to or converse with the people in this particular car and then the car would be parked and he would get out of the station wagon again and walk inside the building and from our vantage point, we could see directly into the doorway where we could observe him open the door which was [135a] to the right after you entered the building. After these people from the car went in, he came out and went back to the station wagon.

Q. Did you know how he got the building open?

A. We had a suspicion and we were wrong.

Q. Did you think he was using a key or something?

A. Yes, sir, we thought it was a key.

Q. Did you find out how he opened the door?

A. Yes, sir.

Q. How was it that he opened the door?

A. He had a door knob and it could be inserted through the shaft in the door and by turning it, it could be opened.

Q. I show you Commonwealth's Exhibit No. 6. Is that what you mean?

A. Yes, this could be removed from the door and by inserting into the shaft, you could insert this into the door (gesturing).

Q. Where was that found?

A. That was found laying on the front seat of the new Pontiac Station Wagon which the young man was sitting in and getting in and out of.

Q. Were there any persons going in any other way?

A. No, this was the only ingress and egress.

Q. And this was the only way they went in?

A. That's right, sir. This was where the Pontiac was parked and they went in and out of the building this way.

Q. Where would these people park?

[136a] A. They would park back of the building up toward the road. They had a regular parking area there.

Q. Now, you observed that, you say?

A. From where we had arrangements previously to rendezvous at the back of this previously described building and we worked our way around the creek bottom and up to the building and then, Lt. Titler and myself and Trooper Valent went up to the rear of the building and from that point, by boosting each other up on the other person's shoulders, we were able to see into the building from several areas in the windows that hadn't been completely blacked out.

Q. Were you one of the persons who actually looked into the building?

A. I was, sir.

Q. What did you observe?

A. The view was limited and as you could see in the top, you could see the upper portion of the men and you could see where they were in the building and by looking the lower portion, you could see the table and what the men were doing and the dice on the table, but then you couldn't associate the hands and bodies with the heads, because you didn't know who was who.

Q. When you looked through the top, you could recognize the people.

A. Yes.

Q. Did you see the defendant, Mr. Laris, there?

A. I did.

Q. And I assume you looked through both the top and the bottom?

[137a] A. I did.

Q. And then, what did you do after that observation?

A. We didn't—we waited approximately 15 minutes, I suppose, there at the rear of the building, and then we worked our way around to the side of the building and there, at the edge of the building, we again watched the people or the men coming in the cars and this young man getting out of his car and taking them into the building. After a short period of time, of this observation, we approached the station wagon where Detective Titler approached, and attempted to take this young man out of the station wagon and at that time, the inner door opened and one of the men inside of the building started out, where I assume he observed us—but this can only be an assumption—and he started back in hurriedly and at that time, Detective Titler shouted who we were and that we were on a raid and Detective Titler then went through the door with his shoulder and I was right behind him.

Q. Now, you're speaking of the outer door that Detective Titler went through?

A. Yes, sir.

Q. How many doors were there?

A. There was an entrance door and then there was one inner door similar to the one at the rear of this Court Room. Then there was a door like that to the second room.

Q. The first door, was that the one without a door knob?

[138a] A. That's right.

Q. And that was the one Titler busted through?

A. Right, sir.

Q. After he busted through that one, what happened?

A. He got to the second one before it was completely closed and pushed through that and he jumped up on the table spread eagle and I was immediately behind him.

Q. What did you observe inside?

A. There was a chaotic situation. The gentlemen were running around in there and there was a lot of noise. There was approximately 30 men in the place.

Q. What did you do, then, when you got inside?

A. At that time, Trooper Valent singled out Mr. Laris and Mr. Mazza and read the warrant to them and then we made a systematic search of the premises. We had seen the dice from the outside and we couldn't find them inside. I imagine it was approximately three quarters of an hour later when I found them.

Q. Did you confiscate those dice?

A. I did, sir.

Q. Were those turned over, at that time to Trooper Valent for his safekeeping?

A. Yes, sir.

Q. And these dice, are they part of Commonwealth's Exhibit No. 4? Are these the same dice or are these similar to those dice?

A. Yes, sir, I would say these are the dice, because I turned them over to Trooper Valent and he [139a] had them in his possession and he introduced them yesterday.

Q. You say they were submerged in a cup of coffee?

A. Yes, sir, there was a small counter there and there was a paper cup of coffee on it and these were submerged in that coffee?

Q. And you saw this table set up and the people were around it?

A. Yes, sir.

Q. What else was in the room?

A. There were several small tables and like I said previously, there was a small lunch counter that separated this room from a small kitchen.

Q. Was there any observation that you made that would indicate the room was being used for any other type of activity other than what you observed?

A. No, sir.

Q. Of these nine exhibits, which ones did you actually find beside the dice?

A. I saw the dice you have there at that time, but I didn't pick up anything other than the dice.

Q. You were the officer in charge and I assume these were brought to you?

A. No, sir, they were placed on a table and turned over to Trooper Valent for his safekeeping.

Q. Then, at the time you observed them all?

A. Yes, sir.

Q. What happened then when you rounded up all of the evidence and placed it on the table for Trooper Valent? [140a] A. Well, of course, from there, these gentlemen were taken before the issuing authority, Squire Storar at that time.

Q. You are speaking of Mr. Mazza and Mr. Laris?

A. All of them were actually taken there.

Q. But the others only posted a forfeit?

A. Right.

Mr. Tocci: You may cross examine.

CROSS EXAMINATION by Mr. Conte:

Q. Officer Barger, at one time did you see Mr. Laris handling the dice, is that correct?

A. No, sir, I can't say I actually saw him or any other person handling dice. I saw the dice being rolled.

Q. At no time did you see Mr. Laris betting?

A. I can't say I saw anybody betting.

Q. At no time did you see Mr. Laris paying off anybody?

A. No, sir.

Q. As I understand, sergeant—sorry, lieutenant—Lieutenant Barger, in this raid you treated players in a different way than you treated persons who you believed had any connection with the ownership of the premises and the ownership of the game. The players were put on one side and paid forfeitures and the other persons charged with establishing a gambling house?

[141a] A. Yes, sir. The principal charge is establishing a gambling place, which is a misdemeanor, which must be handled by the Court and playing is only a minor offense that can be handled by the magistrate.

Q. And that would be the forfeiture?

A. Yes, sir.

Q. In front of this building where you said this Pontiac Station Wagon was parked in front of those doors, as I recall from my visit to the premises—but not on June 23rd—that there is a cinder road. Is that correct?

A. It was covered with cinders at one time, but I think at that time it was generally dirt.

Q. And this road led in front of this garage and the road separated the garage from the parking area that you were talking about?

A. No, sir, as I recall the road separated the building from the embankment and then the road goes on and crosses a bridge crossing the creek all the way into Allegheny County.

Q. But before the road—

A. Actually there were two parking areas there. At that time they were using the one before you got to the building described and there was another one after you crossed the bridge.

Mr. Conte: I believe that's all. Thank you.

Mr. Tocci: I would like to ask that the lieutenant be excused. He has to get back to Washington County.

[142a] Mr. Conte: I have no objection.

(Witness excused.)

Mr. Tocci: Trooper Porter, please.

JAMES M. PORTER, called as a witness on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Tocci:

Q. Will you state your name, please?

A. James M. Porter.

Q. You are a Pennsylvania State Police Trooper?

A. Yes, sir.

Q. Where are you stationed?

A. Butler, Pennsylvania.

Q. Were you a trooper on June 23, 1963?

A. I didn't hear the question.

Q. Were you a State Police Trooper on June 23, 1963?

A. Yes, I was.

Q. How long have you been a Pennsylvania State Police Trooper?

A. 19 years.

Q. Were you involved in this raid on the charges which were brought against Mr. Laris?

[143a] A. Yes, sir.

Q. We have had the testimony by Trooper Valent and Lt. Barger and Lt. Titler. You heard all that testimony, didn't you?

A. Yes, sir.

Q. Were you along when they met at Brookside Drive-In?

A. Yes.

Q. Did you go from Brookside with them in the station wagon?

A. I did.

Q. What happened after you arrived at the premises?

A. We went over an embankment and around to the rear of the block building and, of course, we had observed the dice game in progress through a window and I think the entire raiding party observed this dice game or crap game. Then we went around to the front of the building and Lt. Titler went inside and of course we conducted a raid then.

Q. Pretty much what you observed, is that what the other officers have already testified that they observed?

A. Yes.

Q. Did you actually go inside?

A. I did.

Q. Did you assist in the actual search for and confiscation of these exhibits?

A. Yes.

Q. Did you see Mr. Laris there?

A. Yes, I did.

[144a] Q. Did you see him when you looked through the window at the time the game was being conducted?

A. No.

Q. You did not?

A. No.

Q. You saw him when you got inside?

A. Yes.

Q. There has been testimony with reference to a station wagon that was parked either diagonally or parallel with the door, the garage door at the entrance. Did you observe that?

A. Yes, I did.

Q. Was there a person in the vehicle when you first saw it?

A. Yes, there was.

Q. What was he doing?

A. He was just sitting in the car and then, when somebody drove up he would arrange for the parking and he would admit these people to the building.

Mr. Tocci: Cross examine.

Mr. Conte: No cross examination.

(Witness excused.)

Mr. Tocci: Trooper McCloskey, please.

[145a] GEORGE K. McCLOSKEY, called as a witness on behalf of the Commonwealth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Tocci:

Q. State your name, please?

A. George K. McCloskey.

Q. You are a Pennsylvania State Trooper?

A. Yes, sir.

Q. Where are you stationed?

A. Warrendale.

Q. How long have you been a trooper in the State Police?

A. 15½ years.

Q. I assume you were a trooper on June 23, 1963?

A. Yes, sir.

Q. Were you involved in the investigation and raid conducted on these premises—

A. Yes, sir.

Q. —on that date?

A. Yes.

Q. You testified—

A. Yes, sir.

Q. Wait until I finish the questions, please.

A. All right.

Q. When was the first time you were on the premises?

A. I was there with Trooper Valent on the 22nd.

[146a] Q. At this time, only you and Trooper Valent were there?

A. Yes, sir.

Q. How did you get there?

A. We got there in an unmarked state car.

Q. Were you in uniform or civilian clothing?

A. Civilian clothes.

Q. And the 22nd was a Saturday night?

A. I think so, sir.

Q. What did you and Trooper Valent do at that time?

A. We went to the back of the cement block building and we listened and people was talking and you could hear silver dropping and cards shuffling and we went to

Ambridge and made a call to Detective Titler and told him the game was in progress.

Q. At that time, did you see the defendant, Mr. Laris?

A. No, sir.

Q. Did you see this Pontiac Station Wagon that we had heard testimony about?

A. Yes, sir, I did.

Q. And did you see the person who was in it?

A. Yes, a red headed kid, Szuchy, or something like that his name was.

Q. Where was he?

A. Sitting in the car.

Q. What would he do?

A. When the people came up to the place, he would talk to them and they would park and he would take them in. I couldn't see exactly where they went [147a] after they stepped in the front entranceway, but he would take them in and come back out.

Q. With reference to this particular block building in Economy Borough, was that the first time you were there on June 22nd?

A. Yes.

Q. After you and Valent were there and decided or at least heard the game going on, you said you went back and called—

A. Detective Titler.

Q. And he was in charge of the party at that time?

A. Yes.

Q. But Barger was the highest ranking officer?

A. Yes, he was working along with Barger.

Q. When you called them, what did you do then?

A. We met at Warrendale Barracks where we met with Detective Barger and Detective Titler and Joe Barr who's stationed at Washington.

Q. What was the purpose of the meeting up there?

A. To tell them what we heard and telling Officer Valent to go down and get the search warrant and body warrants for the men.

Q. Did you go with him?

A. Yes, we went to Frank Storar's.

Q. The two of you.

A. Yes.

Q. What about the other four?

A. They met us down there by some drive-in theatre.

[148a] Q. And then you went to the premises?

A. Yes.

Q. You heard the testimony of the four other troopers. Is there anything else that you could testify to?

A. During the raid, I was with Lt. Barger when he found the dice in the coffee cup.

Q. Did you find any of these exhibits yourself?

A. No.

Q. Did you see all of these exhibits when they were there on the table?

A. Yes. Also, we confiscated it, we confiscated that table.

Q. Was that table in the condition that it is now?

A. Yes.

Q. It was?

A. No, it was in nice shape.

Q. Is there anything you would add that I haven't asked you?

A. No.

Q. Is there anything you could add to the prior testimony?

A. No, sir.

Mr. Tocci: You may cross examine.

CROSS EXAMINATION by Mr. Conte:

Q. Trooper, would you let me see those notes you were using?

A. I wasn't using them, sir, but I had them here in case I needed them.

[149a] Q. I saw you looking at them. Would you let me see them.

A. Yes, sir.

(Documents handed to counsel.)

By Mr. Conte:

Q. Officer, I noticed in these notes a list of persons that were there.

A. I don't know. I didn't take the list. Trooper Valent took those names.

Q. I was wondering if whether or not you were able to tell us if some of these people there were professional wrestlers?

Mr. Tocci: I object, your Honor. That's without the scope of direct and has no bearing.

Mr. Conte: I withdraw the question.

No further questions.

Mr. Tocci: Step down.

(Witness excused.)

Mr. Tocci: I believe all of the exhibits have been offered and admitted, but in the event one may have been missed, the Commonwealth now offers Commonwealth's Exhibits No. 1 through 9 into evidence.

The Court: I believe they have been admitted, but if not, they are now.

[150a] Mr. Tocci: The Commonwealth rests, your Honor.

Mr. Conte: At this time, if it please the Court, I will like to make a motion and have an opportunity to argue.

The Court: We will excuse the Jury.

Members of the Jury, you may retire to the hallway as there is a legal matter to be discussed at this time and as soon as this is completed, we will call you to the Jury Box. You may be excused and go to the hallway now. Thank you.

(Whereupon, the Jury retires and Mr. Conte demurs to the evidence; said demurrer and argument being reported but not transcribed.)

The Court: Defendant's demurrer is overruled with an exception to the defendant.

(Whereupon, the Jury returns to the Jury Box.)

Mr. Conte: If it please the Court?

The Court: Mr. Conte.

(Mr. Conte opens to the Jury.)

Mr. Conte: Mrs. McDonnell, please.

[199a] REBUTTAL.

Mr. Tocci: Trooper Valent, please.

JOSEPH J. VALENT, recalled.

Direct Examination by Mr. Tocci:

Q. Trooper, we want to clear up two points. First, how much money did Mr. Laris have on him when apprehended?

A. After I read the body warrants to Mr. Laris, he was asked to empty his pockets, which [illegible] did, and he had a roll of currency which amounted to $82[illegible] in his pocket.

Q. He said Mazza was singled out and he was treated as everybody else was who was in there. Could you tell us how he was handled?

A. After we entered the premises, we singled out Mr. George Laris as well as Mr. Mazza from the persons who

were being charged with gambling and [200a] charged them with establishing a gambling place. The charge of gambling is a minor charge and the charge of establishing a gambling place is a misdemeanor. The other people in the room were charged with gambling, which is a summary offense, which can be handled by a magistrate.

Q. Is it true, then, that Mr. Mazza was separated and Mr. Laris was in with the other group?

A. No, it is not.

Mr. Tocci: That's all.

Mr. Conte: No questions.

Mr. Tocci: We have no further rebuttal testimony, your Honor.

(Witness excused.)

The Court: Anything else, Mr. Conte?

Mr. Conte: Yes, your Honor.

Mr. Laris, come up and take the stand, please.

OPINION.

(Filed March 21, 1968.)

ROWLEY, *J.*: March 21, 1968

The defendant, George Laris, was found guilty by a jury on three counts of an indictment charging:

1. Establishing a game or hazard at which money was bet in violation of § 605 of the Criminal Code;

2. Allowing persons to assemble for the purpose of gambling in violation of § 605 of the Criminal Code, and

3. Conspiracy to do a dishonest or unlawful act, that is to establish a gambling place, in violation of § 302 of the Criminal Code.

He has filed motions "for new trial" and "for arrest of judgment" both of which are before us for disposition. Counsel for the defendant and the Commonwealth appeared before the Court *en banc* at the time set for oral argument. No briefs were filed by either party. At the argument counsel for the defendant stated, with reference to ten of the eleven reasons assigned in support of his motions, that they were "straws that you throw up". No authority or support in the record has been assigned for any of those reasons and should, in our opinion, be dismissed for that reason alone. However, we have reviewed them and conclude that they have no legal basis whatsoever.

The record discloses that on or about October 1, 1961, the defendant, George P. Laris and his wife, leased from the owners, a tract of land containing fifty four (54) acres, situate partly in Allegheny County and partly in Beaver County, Pennsylvania. The lease was for a term of two (2) years and contained an option to purchase the entire property. On April 20, 1963, the Larises sublet that portion of the tract situate in Beaver County, containing thirty (30) acres, to the defendant, Jack Mazza, to be used as a "training camp for wrestlers". The Larises, however, reserved to themselves the right to use any of the land in Beaver County for grazing quarter horses and also the right to use so much of the building erected on the Beaver County property for the storage of saddles, feed and other matters related to the business of raising and breeding quarter horses. The only building erected on the Beaver County property was a cement block garage or barn. As a result of information supplied by a confidential informant, the Pennsylvania State Police placed the Beaver County premises under surveillance on June 14, 1963. A similar surveillance was carried out on the night

of June 22, a Saturday night. As a result, Trooper Joseph J. Valent, in the early morning hours of June 23, 1963 (a Sunday morning), filed an Information against Mr. Laris and Mr. Mazza and obtained a search warrant *and* an arrest warrant for both individuals. A raiding party of six state troopers then returned to the premises. The windows of the cement block building were blacked out. Several cars were in a nearby parking area and the troopers watched several cars arrive in the front of the building. There a station wagon owned by the defendant Laris' wife was parked across the doorway. In it was seated a young man later identified as Albert Szuchy. As each car would arrive, Mr. Szuchy would leave the station wagon, talk briefly to the occupants of the car, park their car for them and then take them into the building. When the troopers moved down to the rear of the building they were able to hear or see silver, dice and cards being used inside the building. Also, observation through several small openings in the blackout arrangements of one of the rear windows disclosed the defendant and a number of individuals inside the room and the presence of a large dice table on which were dice and money. The troopers then went to the front of the building and proceeded to identify themselves to the young man in the station wagon. They discovered at that time that Mr. Szuchy had on the front seat a doorknob which they later discovered fitted one of the interior doors of the building through which it was necessary to pass to get to the room where the dice table was observed. The presence of the troopers was discovered by an individual coming out of the building who immediately turned and started back into the building shutting the door behind him. Lt. Titler shouted that they were the State Police and proceeded to break through the first door, went on through a second doorway and threw him-

self on top of the dice table. The other troopers followed close behind him and immediately placed all of the occupants under custody. Both warrants were read to the persons inside and the troopers continued to search the premises. As a result of the search they found a large dice table already referred to, two dice cups, four dice, two of which were found in a half-consumed cup of coffee, four decks of playing cards, $34.35 in coins and currency on the dice table, and a "hardways" poster, as well as the before mentioned doorknob and a buzzer. There were 31 men in the room, including the defendants, Laris and Mazza.

When arrested, Mr. Laris had $824.00 in his pocket. The defendant Laris testified that he had maintained the property as a ranch or pasture for quarter horses which he was breeding and raising. He testified that he arrived at the premises that night at about 8:30 or 9:00 o'clock and that he was aware that a game had started about 11:30 or midnight. The raid occurred at 2:30 in the morning. He testified that it was a small game and he did not make any objection at that time. The defendant Mazza subsequently entered a plea of guilty to the charges contained in the indictment and was sentenced.

"MOTION FOR ARREST OF JUDGMENT"

Defendant assigned no reason in support of his original motion for arrest of judgment. Subsequently, he filed nine "additional reasons in support of motion for new trial and arrest of judgment" without designating or specifying which reasons were in support of which motion. However, we have examined the additional reasons carefully and conclude that only the first two have any application to the motion for arrest of judgment. These concern alleged errors or irregularities on the face of the record

which, if correct, would render the verdict and judgment erroneous. 11 *P. L. E. Criminal Law* § 619 and § 620. He first complains that the information against him was "filed and executed on a Sunday" in violation of § 4 Act of 1705, I Sm. L. 25, 44 P. S. § 1. The section prohibits the service or execution of any writ or warrant on the first day of the week "except in case of treason, felony or breach of the peace;". This contention was resolved against the defendant in *Commonwealth v. Margaro,* 175 Pa. Super. Ct. 79 (1954) where the Pennsylvania Superior Court held that the term "breach of the peace" includes all indictable offenses. In that case, the Superior Court held that a search warrant which was issued, served and executed on Sunday was valid and that the defendant's subsequent conviction of a violation of § 605 of the Criminal Code based upon the evidence seized pursuant to the search warrant was valid.

The defendant also complains that he was not taken by the state troopers to the "nearest available magistrate". The defendant has not cited any authority which would require that he be taken before the nearest available magistrate, nor has our research disclosed any such authority. On the contrary, the criminal jurisdiction of a justice of the peace extends throughout the county in the absence of statutory regulation. *Commonwealth v. Henry,* 14 D. & C. 651 (Monroe Co. 1930); *Commonwealth v. Marter,* 13 D. & C. 688 (Dauphin Co. 1930). Such a limitation is found in § 1201 as amended, of the Motor Vehicle Code, and applies to summary convictions under the provisions of that code. We are not aware, however, of any such a restriction having been imposed upon the jurisdiction of justices of the peace in the circumstances now before us. There is no merit to defendant's contention.

Moreover, the record discloses that Mr. Laris demanded a hearing, participated in the hearing and subsequently posted bond for court. The first time that he raised the above objections was just prior to the commencement of his trial. Even assuming the existence of any irregularities in his arrest and preliminary hearing he waived them by his conduct prior to indictment. After he had been indicted by the Grand Jury and the trial was ready to commence it was then too late to question the sufficiency or regularity of proceedings prior to the indictment. *Commonwealth v. Caserta*, 177 Pa. Super. Ct. 461 (1955).

MOTION FOR NEW TRIAL

The defendant contends that the verdict was against the law and against the weight of the evidence thereby entitling him to a new trial. There is nothing to support the defendant's contention that the verdict of the jury was against the law. A jury's verdict is not against the law if it is not in disobedience to the instructions or charge of the court. *Commonwealth v. Nestor*, 70 Dauphin 23 (1956), affirmed 183 Pa. Super. Ct. 350 (1957); *Smolowitz v. Cover*, 23 Northumberland Legal Journal 211 (1951); *Commonwealth v. Carpenter*, 25 Wash. Co. Reports 70 (1944); 11 *P. L. E. Criminal Law*, § 609, page 154 *et seq.* There is nothing in this case to indicate that the jury disregarded the Court's instructions.

In considering the defendant's allegation that the verdict is against the weight of the evidence, we must accept as true all of the evidence upon which, if believed, the jury could properly have based its verdict. If that evidence is sufficient to prove the defendant's guilt beyond a reasonable doubt then the verdict is not against the weight of the evidence. *Commonwealth v. Hart*, 403 Pa. 652 (1961);

Commonwealth v. Mickens, 201 Pa. Super. Ct. 48 (1963). In this case there was sufficient evidence from which the jury could find the necessary facts to render a verdict of guilty on all three counts under the law as charged by the Court. *Commonwealth v. DiPiero,* 205 Pa. Super. Ct. 312 (1965); 11 *P. L. E. Criminal Law,* § 609, page 154 *et seq.* There is ample evidence in the record before us from which the jury could justifiably determine that the defendant was engaged with Mr. Mazza in setting up and establishing the game which was interrupted by the state police raid and in allowing persons to assemble for the purpose of gambling.

Defendant also assigns as a basis for a new trial an incident concerning the viewing by the jury of the frame and legs used to support the "dice table". The table itself was in the court room during the trial and marked as an exhibit. It was large and heavy. The frame and legs on which the table was sitting at the time of the state police raid were too bulky and unwieldy to conveniently get into the court room. Therefore, a recess was declared and the jury, together with the Court, the court stenographer, counsel for the defendant and the assistant district attorney proceeded to an area in the front of the Court House for the purpose of viewing the frame and legs. Defendant now alleges that he was not present during that view in person and that conversations in the nature of testimony were had concerning the legs and frame which were subsequently received as exhibits. At the oral argument before the court *en banc* defendant's counsel stated that he could not remember whether the defendant was present at the view of the frame and table legs. The assistant district attorney, on the other hand, stated at argument that although he could not be positive it was his personal recollection that the defendant was there. The record does not dis-

close that any conversation or testimony was received during that recess. Nor has defendant's counsel enlightened us as to what, if anything, was alleged to have been said or how the defendant was possibly prejudiced by anything that occurred during the recess and view. Moreover, there is no requirement that a defendant be present at a view by the jury of the scene of the crime. This has been the law even in a first degree murder trial where the death penalty was imposed. *Commonwealth v. Darcy,* 362 Pa. 259 (1949). In the absence of any constitutional right or legal requirement that defendant be present when the jury viewed the table frame and the absence of any showing that anything occurred during that view to prejudice him this "allegation" affords him no ground for relief.

Defendant next complains that the Court required his counsel to make an offer concerning his proposed line of cross examination of one of the Commonwealth's witnesses. The custom of requiring an offer of proof is widespread and of long standing. Its purpose is to aid in the fair and orderly trial of the case. Its enforcement is a matter within the sound discretion of the trial court and depends largely upon the circumstances which exist at the moment the question arises. *Commonwealth v. Evans,* 190 Pa. Super. Ct. 179, 236 (1959), affirmed 399 Pa. 387 (1960). During his cross examination of State Trooper Joseph J. Valent, defendant's counsel began to question him concerning the preliminary hearing. The assistant district attorney then requested an offer at sidebar for the purpose of making sure that the proposed line of questioning was germane to the proceedings. This request was granted. It developed that defendant's counsel intended to cross examine the trooper concerning some alleged inconsistent statements made at the squire's hearing. When the pro-

posed questions were identified the assistant district attorney stated he had no objection to the questions and defendant's counsel proceeded to ask the questions and obtain the trooper's answers. We believe that the request of the assistant district attorney and the ruling of the Court were entirely proper. Moreover, we fail to see how the defendant possibly could have been prejudiced by such a procedure. The offer was made out of the hearing of the jury and the witness.

The defendant next complains that the Court permitted the Commonwealth to call Trooper Valent to testify in rebuttal. The trooper was asked three questions which concerned the amount of money in defendant's pocket and whether Mr. Laris had been herded together with all of the other players or had been singled out together with Mr. Mazza by the troopers. Following this the defendant took the stand and explained the presence of the large amount of money in his pocket. During the defendant's case in chief, he was questioned by the assistant district attorney on cross examination about the amount of money on his person at the time of his arrest. He stated that he could not recall the amount. Also on direct examination he testified that Mr. Mazza was the only one separated from the group and that he was with all of the rest of the occupants of the building on the other side of the room. We are satisfied that under these circumstances the testimony of Trooper Valent was proper rebuttal. Moreover, the rules concerning the procedure to be followed in the admission of evidence, including those of rebuttal, are not designed to throttle a party or to exalt form over substance. On the contrary, their primary design is to prevent the miscarriage of justice which might result if otherwise relevant evidence was excluded because of an oversight. 1 *Laub, Pa. Trial Guide*, § 115, page 246.

During the questioning of the defense witness, Jack Mazza, defendant's counsel asked him whether his knowledge of the state police officers was partially because of a "previous arrest". The defendant now complains that the assistant district attorney, on cross examination, elicited the information that the defendant Laris knew of the prior arrest and that it was for the same type of offense involved in this case. The defendant Laris was also asked on cross examination whether or not he had known Mr. Mazza when he had been released for gambling. The prior conviction of the witness Mazza on similar charges and the defendant's knowledge of that fact were referred to by the district attorney in his argument and by the Court in its review of the testimony. The defendant now contends that the cross examination on these matters by the assistant district attorney exceeded an agreement which they had between themselves and that the Court should have granted his motion to withdraw a juror. The assistant district attorney denied in the first place that he had agreed to limit his cross examination of either the witness Mazza or the defendant Laris in the manner contended for by defendant's counsel. Moreover, throughout the entire period of this cross examination and the assistant district attorney's argument, defendant's counsel made no objection. It was not until the following morning, immediately preceding the Court's charge to the jury, that he made his motion to withdraw a juror. Moreover, he did not object to the Court's review of the testimony after the completion of the Charge. This was a matter introduced by defendant's counsel himself in his own direct examination of the witness Mazza. He then set by and did nothing until the testimony was closed and counsel had completed their arguments. We are of the opinion that there was nothing improper in the questions asked by the assis-

tant district attorney nor in his argument. Moreover, even if the questions could be considered offensive, still defendant's counsel's failure to make timely objection permits the Court to treat the evidence as any other properly admitted evidence and to refer to it in its charge. It is necessary that counsel pursue any objection which they may have timely. It is too late to object after the testimony has been closed and counsel have presented their respective arguments to the jury. 38 *P. L. E. Trial,* §§ 82 and 83, pages 76 *et seq.*

Defendant's sole complaint concerning the charge of the Court was that the Court refused his request to charge "that the first duty of the jury is to explain away the facts consistent with a presumption of innocence." The Court fully and completely charged the jury concerning the presumption of the defendant's innocence and the burden which the Commonwealth had of proving his guilt beyond a reasonable doubt. Defendant took no exception to that portion of the charge. Defendant's counsel did not cite any authority in support of his request nor does he do so now. It is well settled that the Commonwealth's burden does not require that it demonstrate "the utter impossibility of innocence", *Commonwealth v. Cohan,* 177 Pa. Super. Ct. 532, 543 (1955). As we understand defendant's request, this is exactly what he would have us require of the Commonwealth and the jury. According to the defendant's request, if there were one single, minute fact consistent with innocence which could not be explained by the jury then they would not be permitted to render a verdict of conviction. At the same time such a fact standing by itself may not be sufficient to raise a reasonable doubt in the mind of the jury. Thus, it is obvious to us that defendant's request is clearly improper and was appropriately refused.

Finally, the defendant alleges that the Court erred in refusing to suppress and permitting to be introduced into evidence, the various items confiscated by the police following the arrest, as well as the testimony of the state troopers relative to the items seized. The defendant, of course, contends that these items were seized as a result of an illegal search and seizure and that they are therefore inadmissible as well as any testimony concerning them. The defendant argues in this regard that the search warrant obtained by the state troopers was deficient in that it did not describe the premises or property to be searched with particularity. The Commonwealth concedes, and has conceded all along, that the search warrant is in fact defective for the reasons advanced by the defendant. The Commonwealth argues further, however, that the evidence in question was seized during the course of a lawful arrest and therefore is admissible. With this contention we agree. It is settled that the results of a search made without a search warrant or with an invalid search warrant are still admissible at trial if the search is incident to a lawful arrest. *Commonwealth v. Goslee*, 427 Pa. 403 (1967); *Commonwealth v. Ellsworth*, 421 Pa. 169 (1966); *Commonwealth ex rel. Ensor v. Cummings*, 420 Pa. 23 (1966). We are of the opinion in this case that the arrest of the defendant and Mr. Mazza was valid and that the evidence objected to was seized after a search which was incident to that lawful arrest. In the first place, it should be pointed out that the troopers obtained not only a search warrant but a body or arrest warrant for Mr. Mazza and the defendant Laris. This fact appears to have been overlooked by both the Commonwealth and the defendant's Counsel. At no time has defendant's counsel ever objected to or contended that the arrest warrant was void or invalid. Therefore, the officers, in executing a valid arrest warrant, were making a lawful

arrest and the evidence seized incident thereto was properly admitted at trial. The Commonwealth further contends, however, that even without a warrant the arrest was lawful since the state troopers had probable cause to believe that a misdemeanor was being committed in their presence. *Commonwealth v. Garrick,* 210 Pa. Super. Ct. 124 (1967); *Commonwealth v. Calvarese,* 199 Pa. Super. Ct. 319 (1962). In discussing the requirement of probable cause the Superior Court said in *Commonwealth v. Calvarese, supra,* at pages 323 and 324:

> "Probable cause does not require, as the Supreme Court has so frequently said, that the arresting officers have evidence to establish criminal guilt (Citing case). On the other hand, a mere inkling or suspicion is not enough (Citing case). 'Probable cause,' Justice Douglas said in Henry v. United States, 1959, 361 U. S. 98, 102, 80 S. Ct. 168, 171, 4 L. Ed. 2d 134, 'exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed.'"

We believe that the evidence in this case is more ample to warrant a prudent man in believing that a misdemeanor was being committed in the presence of the troopers. By reason of their surveillance on June 14, 1963 they were aware that there was a dice table inside the building. By virtue of the surveillance conducted on the night of June 22 and June 23 they were aware that the building was blacked out, that the sound of money, dice and cards could be heard inside the building, and that a number of individuals had been led into the building after being passed or cleared by the attendant outside. With all of these facts in their possession, the troopers certainly had more than a mere inkling or suspicion that a misdemeanor was being committed. Defendant contends, however, that the

surveillance and investigation at the rear of the block building immediately prior to entering it constituted a trespass and, therefore, the information thereby gained may not be used to justify the arrest or the subsequent search. Even assuming that the officers did commit a technical trespass and the defendant Laris had standing to complain of it (his only interest in the real estate at that time was a reserved right to pasture horses and store feed and saddles, which right was not trespassed upon or interferred with by the officers), we do not understand this to be the law. The cases cited by the defendant in support of his pretrial motion to suppress the evidence involve dwelling houses and residences. The protection of the Fourth Amendment to the Constitution of the United States against unreasonable searches and seizures is not extended to open fields. A simple trespass, without more, does not invalidate a subsequent seizure. *Hester v. United States,* 265 U. S. 57 (1924); *Brock v. United States,* 256 F. 2d 55 (5th Cir., 1958); *United States v. Lewis,* 227 F. Supp. 433 (D. C. S. D. N. Y. 1964); *United States v. Buchner,* 164 F. Supp. 836 (D. C. D. C. 1958), affirmed 268 F. 2d 891, cert. denied 359 U. S. 908; *United States v. Hayden,* 140 F. Supp. 429 (D. C. Md. 1956); *United States v. Carter,* 118 F. Supp. 559 (D. C. W. D. Pa. 1954). We are of the opinion that the arrest of the defendant Laris and Mr. Mazza, either with or without a warrant, was valid and, therefore, the subsequent search being incident thereto, the items seized were properly admissible in evidence at the trial of this case.

Defendant was fairly tried. The jury chose to disbelieve his testimony and believed that of the Commonwealth and its witnesses. The evidence produced amply supports the verdict of the jury. There is no merit in any of the reasons

advanced by the defendant in support of his motions. They must, therefore be denied.

ORDER.

Now, March 21, 1968, for the reasons expressed in the foregoing opinion, it is Ordered and Directed that defendant's motions for arrest of judgment and for a new trial be, and the same hereby are, denied. It is further Ordered and Directed that the defendant, George Laris, be and appeared before the Court on April 3, 1968 at 9:00 o'clock A. M. for sentence.

BY THE COURT,

JAMES E. ROWLEY,
J.

We Concur:
Ralph F. Scalern,
P. J.

John N. Sawyer,
J.

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IN THE

Supreme Court of the United States

No. [redacted] 119-

October Term, [redacted] 1969

GEORGE LARIS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

J. QUINT SALMON,
Specially Appearing,

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IN THE

Supreme Court of the United States

No.....

October Term, 1968

GEORGE LARIS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To The Honorable, The Chief Justice and The Justices of the Supreme Court of the United States:

This brief in opposition to the petition for writ of certiorari to the Supreme Court of Pennsylvania is being filed by the Office of the District Attorney of the County of Beaver, Commonwealth of Pennsylvania, for the reason that this case presents no issue of substance not previously decided by this Court.

History

(All record references are to the printed record of this case filed in the Superior Court of Pennsylvania.)

On July 10, 1963, an information was filed charging the petitioner in this case with three violations of the Criminal

Code of the Commonwealth of Pennsylvania. He was charged with establishing a gambling house, allowing persons to assemble for the purpose of gambling, and conspiracy to establish a gambling house. After four years of delay, the petitioner was tried before a jury, and on June 16, 1967, he was found guilty of all three offenses. After the verdict, motions for a new trial and in arrest of judgment were filed. On March 21, 1968, Judge James E. Rowley filed an opinion and order denying these motions. The opinion of the trial court is set forth at length beginning on page 93 of the petition for certiorari. The full opinion is also set forth in the record, beginning at page 242a. Following the sentence of the Court on April 3, 1968, the petitioner appealed to the Superior Court of Pennsylvania. The judgment of sentence was affirmed, *per curiam* on December 12, 1968. Subsequently, the Supreme Court of Pennsylvania, on February 12, 1969, denied a petition for the allowance of an appeal. On May 15, 1969, the petitioner, George Laris, filed a petition for a writ of certiorari, and the record was certified on that date.

During the month of June, 1963, the Pennsylvania State Police were informed that gambling activities were being carried on in a building located in Economy Borough, Beaver County (R-100a, 117a). The property in question was a 54 acre tract which had been leased by the petitioner, George Laris, from O. B. Weinman and his wife. This lease was to run for a period of two years from October 1, 1961 (R-70a). On this property was a residence and a cement block building. The residence was located in Allegheny County and the cement block building in Beaver County. The gambling game was being conducted in the cement block building which was a one-story building with five rooms in it. According to the petitioner, this building had been sublet to Jack Mazza in May, 1963. In the front

or entrance to this building there was a garage with a double door. In order to enter the rest of the building, it was necessary to pass through a series of two doors located at the back of the garage. This was the only entrance into the rest of the building. The first room inside the building was the largest and was the room where the dice table was located.

Following receipt of confidential information about gambling, a surveillance of this building was conducted on June 14, 1963, by Lt. Roy L. Titler and Trooper Joseph Valent (R-76a, 117a). On that occasion Trooper Valent and Lt. Titler observed the building and the activities around the building from a wooded area about 100 feet from the building. Both officers testified that they observed the petitioner, George Laris, and Jack Mazza on the premises and inside the concrete block building. They further testified that they went around the building and looked into the building and observed the dice table inside the large room in the building (R-76a, 118a). Both officers also testified to the fact that the table was standing on the legs in position for use as a crap table and that it was in the same position as on the night of the raid (R-78a, 118a). On June 22, 1963, Trooper Valent and another member of the State Police, Trooper McCloskey, returned to the area after receiving more information that gambling activities were being carried on (R-100a, 82a). They arrived at approximately 9:30 P. M. They observed the building from 100 feet away. From that point they observed several cars pulling up to the front of the door. They observed the occupants of the cars conversing with a man seated in a station wagon which was parked across the front of the garage. The cars were parked and the groups were escorted inside by the man in the station wagon (R-83a). The State Troopers proceeded to the back of the building

from where they could hear cards being shuffled and money being thrown on the table (R-85a). Following this, the Troopers reported to their superior officers and plans for the raid of this building were made. Warrants for the arrest of Jack Mazza and George Laris were obtained, as was a search warrant for the premises (R-86a). Thereafter, a raiding party of State Police proceeded to this building. In this party were Lt. Roy L. Titler, Lt. James D. Barger, Trooper Valent, Trooper McCloskey, Trooper Porter and Trooper Barr. When they arrived on the premises, they proceeded to a point on an embankment above the entrance to the building where they stayed for 15 or 20 minutes. This point was about 100 feet from the building (R-134a). At that time they observed a station wagon with a man sitting in it parked across the entrance to the garage. It was testified that when a car would drive up, this man would talk to the people in the car, after which the car would be parked. He would then lead them to the doorway inside the garage and admit them into the room where the dice game was being conducted. After he let them in, he would come back and sit in the station wagon. It was determined that this man was letting these persons in by means of a door knob which was found on the front seat of the station wagon in which he was sitting (R-135a). Following that, the raiding party proceeded to the back of the building where they could see into the building from windows which had been partially blacked out (R-136a). Each member of the raiding party testified that they had observed a dice game going on inside the room (R-136a). It was also testified that Mr. Laris was seen inside (R-121a, 136a). Following this observation, the party proceeded around to the front of the building where they observed more people entering (R-137a). At that time, Lt. Titler identified himself to the man who was sitting in the station

wagon and requested the key to the door leading into the building. Somebody inside looked out, at which time Lt. Titler shouted that it was the State Police and that they were conducting a raid. He thereupon ran into the room breaking through the first door and pushing the second open before it could be closed (R-138a). At that time, the arrest warrants for Mr. Laris and Mr. Mazza were read to them (R- 138a).

At the time of the raid, a number of items were seized which were used in evidence at the time of the trial. These items were the subject of a pre-trial suppression hearing and were objected to before the beginning of the trial. In addition to the dice table and legs, the following items were seized: Commonwealth's Exhibit No. 5, decks of playing cards; Commonwealth's Exhibit No. 6, a door knob with a shaft attached; Commonwealth's Exhibit No. 7, a door bell buzzer; Commonwealth's Exhibit No. 8, $34.35 in coin and currency; and Commonwealth's Exhibit No. 9, a poster entitled "Hard Ways". These items were all identified by Trooper Valent (R-92a, 93a, 95a, 96a). On December 10, 1963, a petition was filed to suppress the evidence which was seized on June 23, 1963, and in connection therewith the depositions of Trooper Joseph Valent and Lt. Roy L. Titler were taken. The petition to suppress was overruled and the case listed for trial. The petition to suppress appears on pages 12a, 13a, and 14a of the record. It is interesting to note that the petitioner did not raise the issue of an illegal trespass in that petition. In fact, he did not raise it at the pre-trial discussion in chambers before the start of the trial.

It was conceded by the Commonwealth that the search warrant which had been obtained by the Pennsylvania State Police in this case was invalid for the reason that it

did not sufficiently describe the location of the premises to be searched. There is, therefore, no issue to be considered in this respect. In addition, however, to the search warrant for the premises, the Pennsylvania State Police obtained body or arrest warrants for the petitioner, George Laris. At no time, either before the trial or during the post-trial motions and hearings, was the validity of this arrest warrant questioned. The trial Judge, in his opinion, says:

> "In the first place, it should be pointed out that the troopers obtained not only a search warrant but a body or arrest warrant for Mr. Mazza and the defendant Laris. This fact appears to have been overlooked by both the Commonwealth and the defendant's Counsel. At no time has defendant's counsel ever objected to or contended that the arrest warrant was void or invalid. Therefore, the officers, in executing a valid arrest warrant, were making a lawful arrest and the evidence seized incident thereto was properly admitted at trial" (R-255a).

In view of the fact that this question was not raised at any time in the trial Court, it is submitted that it is improper to do so now and for this reason alone the petition for certiorari should be denied.

Argument

The only issue presented in this case is whether or not the arrest of the petitioner was a lawful arrest. If the arrest was lawful, there is no question that the search and seizure that followed was incidental to the arrest and, therefore, valid. It is apparently the position of the petitioner that the trespass on the land in question by the State Police automatically makes the arrest unlawful and the subsequent search and seizure violative of the Fourth Amendment of the United States Constitution. It has been conceded by all parties concerned that the search warrant for

the premises did not sufficiently describe the property and was, therefore, invalid. It is the contention of the Commonwealth that the arrest of the petitioner was lawful on two grounds. The first is that there was issued, at the same time as the search warrant, a valid arrest warrant for George Laris. The second is that even without a warrant, the arrest was lawful since the State Police had probable cause to believe a misdemeanor was being committed in their presence.

At no time until the appeal did anybody suggest that the arrest warrant was not valid. No attempt was made by the petitioner's counsel at any time before or during trial to attack the validity of the arrest warrant. It must be assumed, therefore, that there was no basis for such an attack. The petitioner now argues that the arrest warrant, as well as the arrest on view, was not lawful by reason of the fact that the information which led to the obtaining of this warrant and to the arrest was acquired by a surveillance conducted on the premises in question and this surveillance constituted a trespass to land.

It is conceded by the Commonwealth that the surveillance made on June 14, 1963, from the nearby hillside and on June 23 from the same position constituted a trespass to land. This trespass, however, did not in anyway violate the constitutional rights of the petitioner, George Laris. Since the landmark case of *Hester v. United States*, 265 U. S. 57 (1924), it has been repeatedly held that open fields do not come within the purview of the Fourth Amendment provision which protects the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures . . ." This case has not been overruled and should apply in the present circumstances. A number of Circuit Court decisions have upheld the doctrine of the *Hester* case.

In the case of *United States v. Campbell,* 395 F. 2d 848 (4th Cir.), (1968), the Court of Appeals of the Fourth Circuit held that observation by Internal Revenue Agents of a transaction in illicit whiskey which took place in the back yard of defendant's home was not an unlawful search. The Agents viewed this transaction from an adjacent cornfield. The Court said that the "open field" doctrine applied to that observation. The Court further stated at page 849: "Nothing said in *Katz v. United States,* 389 U. S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), requires a different result". Another similar case is that of *McDowell v. United States,* 383 F. 2d 599 (8th Cir.), (1967). In that case, Federal Agents undertook a surveillance of certain fields belonging to the defendant after having received complaints that the defendant was violating the Federal Game Laws. It was conceded that the Agents had no search warrant and no consent to be on the land of the defendant. During the course of the surveillance, the Agents observed evidence of the violations. There was an attempt to suppress the evidence and the testimony of the officers. At page 603, the Court held:

> "Under Federal Laws the search of open fields without a search warrant is not constitutionally unreasonable. *Hester v. United States,* 265 U. S. 57, 44 S. Ct. 445, 68 L. Ed. 898 (1926). *This is true even though entrance to the area searched was gained by trespass. Hester v. United States, supra; Giacona v. United States,* 257 F. 2d 450 (5th Cir. 1958). Cert. denied, 358 U. S. 873, 79 S. Ct. 113, 3 L. Ed. 2d 104 (1958)." (Emphasis supplied.)

Contrary to the analysis of the opinion of the trial Court, there was no holding that the building was an open field or that it was not a constitutionally protected area. The Court did hold, however, that the police officers, in executing a valid arrest warrant, were making a lawful arrest and

that the evidence seized incident thereto was properly admitted at trial. Moreover, that the arrest was lawful since the State Troopers had probable cause to believe that a misdemeanor was being committed in their presence. Judge Rowley pointed out that a trespass to land without more does not invalidate a subsequent seizure (R-257a). It should also be noted that there was, in fact, no trespass as to the petitioner, Laris, for the reason that the building in question had been leased by him to Jack Mazza.

The petitioner has questioned for the first time, the existence of probable cause for the issuance of a warrant or for the arrest.

This position is based on the theory that police acquired the information necessary to establish probable cause by trespassing on the petitioner's property. This theory was not advanced during any of the proceedings in the trial Court; and for this reason, it is submitted cannot be raised now.

Moreover, to hold that a trespass to land would taint any information acquired thereby so that it could not be used to establish probable cause would go far beyond any case now in existence. Furthermore, to so hold would require an overruling of *Hester v. United States, supra,* pg. 7.

It is submitted that it is clear that probable cause existed for the issuance of the warrant.

Since probable cause existed for the issuance and there was nothing improper in the manner of execution of the warrant, it is submitted that any evidence seized in connection with the arrest would be lawfully seized and therefore admissible at the trial. Therefore, the trespass committed by the State Police would not taint the procuring of the arrest warrant or the execution of the same by the officers.

It is also contended by the Commonwealth, that in addition to the fact that they had in their possession a valid arrest warrant, the arrest was lawful since the police had probable cause to believe that a misdemeanor was being committed in their presence.

In *Commonwealth v. Garrick,* 210 Pa. Super. 124, at p. 126 the Court said:

> ". . . The rule in this state is that an officer may make an arrest without a warrant where he has probable cause to believe that a misdemeanor is being committed in his presence. *Commonwealth v. Calvarese,* 199 Pa. Superior Ct. 319, 185 A. 2d 657 (1962); *Commonwealth v. Rubin,* 82 Pa. Superior Ct. 315 (1923); *Rarick v. McManomon,* 17 Pa. Superior Ct. 154 (1901); . . ."

There are numerous items which would justify the State Police as prudent men in believing that a misdemeanor was being committed on the premises. To begin with, the State Police had information from an informant that gambling was being carried on in this building. On June 14, two State Troopers observed Mr. Mazza and Mr. Laris on the premises and also observed a dice table inside the building. On June 22 and June 23, they observed numerous automobiles parked and pulling up and the numerous persons going into the building. The manner in which the car was parked across the entrance to the garage making it impossible for anyone to drive into the garage was an unusual circumstance. The attendant ushering groups of people through the garage and through two doors into the area where the gambling table was located was also a highly suspicious circumstance. Furthermore, the police could observe that the windows in the concrete building were blacked out. It should also be remembered that these activities were being conducted very late at night. Almost

all of these facts and circumstances became known to the police from the hillside 100 feet from the building. In addition, the officers heard the shuffling of cards and the sound of money. The sum total of these facts certainly would be sufficient to justify a prudent man in believing that a misdemeanor was being committed.

When the raiding party arrived at the concrete building and looked through the window at the dice game which was in progress, obviously they knew a misdemeanor was being committed. There is no question about the fact that they had probable cause at that time to make an arrest. The only question to be determined would be at what point, if at all, the officers violated the Fourth Amendment.

In asserting that the search and seizure and the arrest was in violation of the Fourth Amendment, the petitioner relies primarily on the recent case of *Katz v. United States*, 389 U. S. 347, 88 S. Ct. 507 (1967).

The *Katz* case is, of course, distinguishable from our case, and the most important distinguishing feature is the fact that the surveillance was conducted by means of electronic equipment. This, it is submitted, is the crux of the case in question.

The Court, in the majority opinion in *Katz* does not, address itself to the problem which exists in the case at bar. There is obviously a distinction between evidence acquired by the use of electronic equipment and evidence acquired solely by viewing the commission of a crime.

The petitioner's counsel has attempted to equate our case with those cases involving the use of electronic equipment. The comparison is not appropriate. It is submitted that our case should be compared first to the cases involving the "open field" rule of the *Hester* case and secondly to the

cases involving the search of automobiles. The *Hester* rule would apply to the surveillances made by the State Police from the nearby hillside. The actions of the State Police in looking through the window would be very similar to a situation where the police officer seizes evidence which he sees inside an automobile. In the *Katz* case, *supra*, at p. 511, the Court says:

> "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."

This dice game operated by George Laris was not only exposed to the public, the public was invited. There is obviously a very great distinction between invading the privacy of a phone booth and viewing, through a window, a crowd of thirty people around a dice table shooting dice.

By virtue of the fact that the police officers had probable cause to believe that a misdemeanor was being committed in their presence, the petitioner's arrest was lawful. Since the evidence in question was seized after a search incident to that arrest, it was admissible at the trial. The law is well settled that a search and seizure incident to a lawful arrest does not violate the Fourth Amendment.

The position of the petitioner, as set forth in the petition for writ of certiorari, is based on a number of unwarranted assertions about the affirmance of the Court of Quarter Sessions of Beaver County. The actions of the Supreme and Superior Courts of Pennsylvania are, in fact, only an affirmance of the conviction and, in fact, do not indicate any position whatsoever by the Appellate Courts of Pennsylvania. An effort has been made throughout the petition for certiorari to suggest that the Appellate Courts of the Commonwealth of Pennsylvania and the decision of the Court of Quarter Sessions of Beaver County, Pennsyl-

vania, is in conflict with the decisions of the Supreme Court of the United States, specifically, *Katz v. United States, supra,* p. 11; *Recznik v. City of Lorain,* 21 L. Ed. 2d 317 (1968) and *Alderman v. United States,* 22 L. Ed. 2d 176. In view of the decisions of the Superior Court and Supreme Courts of Pennsylvania, it is respectfully suggested that those Courts did not find these decisions applicable to this case and for that reason did not feel that there was any necessity for writing an opinion. This certainly would not suggest that the Appellate Courts of Pennsylvania have taken the positions which have been set forth in the petition for certiorari. In fact, the only conclusion which can be drawn is that the Appellate Courts of Pennsylvania found in the record no basis for a reversal of the conviction. Perhaps the most that can be said is that the Supreme and Superior Courts of Pennsylvania agreed with Judge Rowley that the petitioner had a fair trial, that the evidence supported the verdict of the jury, and that none of the reasons advanced by the petitioner in support of his motions in arrest of judgment and for a new trial had any merit. It is obvious that the Superior Court could have reached the same conclusion as did the trial Judge; that the evidence was seized incidental to a lawful arrest and was, therefore, properly admitted at trial, and that since there had been no objection to the validity of the arrest warrant, it was not a question which could be raised on appeal.

In addition to the *Katz* case, the petitioner relies on two other recent cases: *Recznik v. City of Lorain,* 21 L. Ed. 2d 317 (1968) and *Alderman v. United States,* 22 L. Ed. 2d 176. The *Alderman* case differs factually from our case, in that it involves electronic surveillance. The *Recznik* case is, in some respects, factually similar to our case.

However, there was no arrest warrant involved, and the decision turned on the question of whether or not probable cause existed for the making of an arrest. The Court held that the respondent did not meet that burden of proving probable cause. This conclusion was based on the testimony of the senior arresting officer who testified that when he entered the apartment, he had no evidence to make an arrest. The facts as stated in the opinion, indicate that the police officers did not observe the gambling game being conducted until after they were inside the premises. In our case, of course, the game was observed by the officers while they were outside the building. It is urged that on the basis of the entire record in our case, the facts and circumstances clearly warrant the conclusion that the police did, in fact, have probable cause not only for the acquiring of the arrest warrant, but for the making of an arrest by virtue of the fact that a misdemeanor was being committed in their presence.

Conclusion

Although the State Police committed a trespass to land, it is submitted that the constitutional rights of the petitioner were not thereby violated. *Hester v. United States,* 265 U. S. 57 (1924). Watching a dice game through the window of an isolated building does not constitute an unreasonable search and seizure. It would, however, be a valid basis for a lawful arrest and would justify a search and seizure as an incident of the arrest. It would follow that such evidence would be admissible at any subsequent trial.

It is respectfully suggested that the petitioner received a fair trial and that his conviction was proper. Moreover, it is submitted that the petitioner has improperly

raised additional questions not raised in the trial Court. For these reasons, it is respectfully requested that the petition for writ of certiorari be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 119

October Term, 1969

GEORGE LARIS,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

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PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Petitioner respectfully requests that this Court grant rehearing of its order dated October 13, 1969, which denied certiorari and that the Court now grant certiorari.

The petition for certiorari previously filed herein presented these questions as stated:

> "1. Do acts of police officers constitute an unreasonable search when based on the vague information of unidentified informants and without a search warrant, they go on private property and observe several cars going up to a building a hundred feet away and the occupants of the cars going inside that building and then the officers surreptitiously stand right up against windows (covered with black paint to prohibit looking in) of that building surrounded by 30 acres of private ground for the purpose of eavesdropping and

for the purpose of seeing gambling activities, if any, inside?

2. Can the tainted information (the fruit of the unreasonable searches) furnished by warrantless surreptitious surveillances (the last of which had taken place a few hours before) be used as the sole probable cause for the issuance of an arrest warrant?

3. Was the gambling paraphernalia seized as an incident of the arrest in this case (whether it was on view or with an arrest warrant) and the testimony based thereon, purged from their primary taint which attached by reason of such evidence being the 'fruit' of warrantless surreptitious surveillances, the last of which had taken place only a few hours before?"

The petition for certiorari discussed the importance of the questions presented by the Pennsylvania Supreme Court's decision in this case and its impact upon the administration of justice in the State courts of Pennsylvania. At that time no decisions of any other State Supreme Courts had reached a contrary decision to that of the Pennsylvania Supreme Court.

At approximately the same date in which this Court denied certiorari to the petitioner herein, the Supreme Court of California decided in *People vs. Edwards,* (9-24-69) that the search without a warrant of the garbage can of the defendant therein was an unreasonable search and seizure under the Fourth Amendment. The California Supreme Court recognized that the Fourth Amendment protects a reasonable expectation of privacy and this even extends to one's garbage can. The petitioner does not now presently have a complete copy of this Opinion and one will be provided to the Court just as soon as he obtains it. However, a synopsis and excerpt from such Opinion is here attached and marked Exhibit "A". It is petitioner's contention that this case is in all material as-

pects comparable to the present case and that it reaches an exactly opposite result. The basic problem raised by this, the *Edwards* case and the instant case is that the Supreme Court of California interpreting the Fourth Amendment of the United States Constitution reaches a direct opposite result of the Supreme Court of the Commonwealth of Pennsylvania. Furthermore, neither one of these cases has resolved the basic problem of whether the *Chimel vs. California,* 395 U. S. 752 case is retroactive in its application or further whether or not even without consideration of the application of the *Chimel* case, there is a direct conflict between two States in regard to the interpretation of the Fourth Amendment of the United States Constitution.

Since there now exists a clear and express conflict of decisions among the State Courts on an important question of federal law affecting many people in different parts of the country, compelling reasons are evident why the question presented should be reviewed and definitively determined by this Court.

Conclusion

For the reasons set forth in this petition for rehearing as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

LOUIS M. TARASI, JR.

Certificate of Counsel

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph two (2) of Rule 58.

LOUIS M. TARASI, JR.

Exhibit A

6 CrL 2024 10-8-69

CALIFORNIA TRASH CAN PROTECTED BY FOURTH AMENDMENT

California Supreme Court cites owner's "reasonable expectations" that the privacy of his refuse will be respected.

The right of privacy is the main reason for the California Supreme Court's holding unlawful under the Fourth Amendment a highly successful warrantless search of a careless marijuana possessor's trash. "Reasonable expectation of privacy," the court says, is the true criterion for defining the sort of "security in one's house and possessions" that the Fourth Amendment protects.

The trash can is an "adjunct to the domestic economy," and placing something in it is not an abandonment except as to authorized trash men. The court can think of many reasons why persons would not want their "telltale refuse" to be examined by neighbors or others—at least not until it "loses its identity and meaning by becoming part of a large conglomeration of trash elsewhere."

This holding is applied to a trash can that was within a few feet of the defendant's back door and required a trespass for inspection. Common trash piles and those at some distance beyond the house, the court indicates, might be another matter.

Looking to the Chimel v. California, 395 U. S. 752, 5 CrL 3131, questions that might arise if some marijuana found in the defendant's house upon his arrest is proved on retrial not to be "poisonous fruit" of the midden-sifting, a majority of the court declares that Chimel is so nonretroactive that it will not even apply to cases pending on appeal as of Chimel's announcement. However, Justice Peters opposes this view. Chimel so needs explication, he says, that no court should allow itself to wait so long before plunging into construction of it: to forgo the opportunity, he says, is to condone unsavory police practices. (*People v. Edwards, 9/24/69*).

Digest of Opinion: [*Text*] Shortly after 9 p.m. on January 13, 1967 [detective] Hern contacted Mr. Hansen, who lived next door to defendants, and Hansen reported that about a week before he had seen on defendants' back porch a large plastic bag containing described packages, one of which was torn and contained a lark green vegetable substance that appeared similar to alfalfa but did not smell like alfalfa and had a "small funny type seed." [*End Text*]

Two detectives, without a warrant, went to the defendant's house and entered his back yard.

[*Text*] Inside one of the trash cans they found, among other things, a bag which contained marijuana—"possibly enough to roll a couple of cigarettes or more" and which had "Other stuff on top of it."

Hern then took the marijuana back to his office to examine it more carefully. [*End Text*]

They staked out the house until Edwards returned and entered. They then knocked at the door and, refused entrance, broke in, arrested Edwards and his wife, and without a warrant or consent successfully searched every room for marijuana.

[*Text*] The Attorney General argues that the search was valid because, he asserts, the premises around a house are not protected by the Fourth Amendment * * *. [*End Text*]

True, "open fields" have been held outside the Fourth Amendment's protection.

[*Text*] The decisions of the lower federal courts, however, contain conflicting statements as to whether the ground area of the curtilage is protected by the Fourth Amendment * * *. [*End Text*]

Some have declared that the Fourth Amendment's protection has never been restricted to the interior of the house, but has extended to open areas immediately adjacent.

[*Text*] As we have seen, the trash can was within a few feet of the back door of defendant's home and required trespass for its inspection. It was an adjunct to the domestic economy. * * * Placing the marijuana in the trash can, so situated and used, was not an abandonment unless as to persons authorized to remove the receptacle's contents, such as trashmen. (See Work v. United States, at pp. 662-663.) The marijuana itself was not visible without "rummaging" in the receptacle. So far as appears defendants alone resided at the house. In the light of the combined facts and circumstances it appears that defendants exhibited an expectation of privacy, and we be-

lieve that expectation was reasonable under the circumstances of the case. We can readily ascribe many reasons why residents would not want their castaway clothing, letters, medicine bottles or other telltale refuse and trash to be examined by neighbors or others, at least not until the trash has lost its identity and meaning by becoming part of a large conglomeration of trash elsewhere. Half truths leading to rumor and gossip may readily flow from an attempt to "read" the contents of another's trash. [*End Text*]

It is clear, too, that the intrusion here was unreasonable, for warrantless searches are per se unreasonable, subject to a few specifically defined exceptions, and none of these exceptions applies to the trash search here.

[*Text*] People v. Bly, 191 Cal. App. 2d 352, 354, is disapproved to the extent that it is inconsistent with the views expressed herein. [*End Text*]

But it does not necessarily follow that the evidence obtained after arrest is "fruit" of the prior illegal search. Evidence on retrial may establish its independence, and if so the next question will be the application of Chimel v. California, 395 U. S. 752, 5 CrL 3131, to the searches. The Attorney General correctly concedes here that the search violated Chimel, but we hold, especially upon "prior reliance" grounds, that Chimel does not apply retroactively.

[*Text*] An additional question that may arise upon retrial is whether, as argued by defendants on appeal, the arrests were a pretext for the subsequent search. Defendants rely upon the settled rule that when it appears that the search and not the arrest was the real object of the officers in entering upon the premises and that the arrest was a pretext for or at most an incident of the search, the search is not reasonable within the meaning of the

Constitution. (See People v. Haven, 59 Cal. 2d 713, 719.) The recited facts, however, do not show that this is such a case. [*End Text*]—Burke, J.

Concurrence and Dissent: [*Text*] I concur in the portion of the majority decision holding that the search of the trash can was unlawful. I dissent, however, from the portion of the majority opinion that holds that the rule of Chimel v. California * * * applies only to searches which occurred subsequent to June 23, 1969, the date of those decisions.

In my view the rule announced in Chimel applies to all pending cases. To hold that its rulings are purely prospective is an arrogant abuse of judicial power and a blatant exercise of legislative power. In prior opinions, I have stated in detail why this practice of rendering decisions purely prospective is contrary to the judicial function * * * and I will not further repeat those general views herein, but wil linstead set forth the specific reasons why the fair and effective administration of justice requires that the rules adopted in Chimel be applied to pending cases. * * *

The majority's arguments, to the extent that they are entitled to any weight, constitute a direct attack on the exclusionary rule itself rather than furnishing a basis to refuse to apply Chimel to pending cases.

No matter how we try to characterize it, we are in effect condoning unlawful police practices and comprising our own dignity as a guardian of justice and liberty by so doing.

[*Text*] In these days, when so many people have taken to the streets in attack upon our institutions and in defiance of the fundamental concepts of ordered liberty, it is

more than ever necessary that a court out of regard for its own dignity as an agency of justice and custodian of liberty strive to maintain that dignity, vindicate constitutional rights, and encourage respect for a system of justice which does not sacrifice constitutional rights for expediency. * * *

Similarly, to refuse to expeditiously determine which searches are lawful and unlawful under Chimel will also frustrate to a substantial extent either the objective of encouraging officers to secure evidence by lawful rather than unlawful means or the objective of deterring unlawful searches, or both, because the applicability of Chimel in a variety of the most common situations is unclear. [*End Text*]

Chimel leaves many questions, and during the several years that searches conducted after June 23, 1969 take to reach us, policemen without guidance may well interpret Chimel to legalize many unlawful searches.

[*Text*] The other two criteria relied upon by the majority, burden on the administration of justice and reliance of law enforcement officials, do not warrant repudiation of the policies underlying the exclusionary rule and of the well settled principle that judicial decisions unlike legislative acts should be applied to pending appeals. * * *

I agree with the view expressed by Justice Harlan, the only member of the United States Supreme Court who has taken a position on the issue, that Chimel should apply to pending appeals. [*End Text*]—Peters, J.

(People v. Edwards; Calif. Sup. Ct., 9/24/69)